TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 375

THE UNITED STATES OF AMERICA, PETITIONER

vs.

CALIFORNIA COOPERATIVE CANNERIES

WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

FILED FEB. [illegible], 1936

CERTIORARI GRANTED [illegible], 1936

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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

INDEX

	Original	Print
Proceedings in Court of Appeals of the District of Columbia	1	1
Caption [omitted in printing]	1	1
Record from Supreme Court	2	1
Petition	2	1
Answer of Swift & Co.	19	18
Armour & Co.	38	37
Morris & Co.	59	59
Wilson & Co. (Inc.)	83	84
The Cudahy Packing Co.	97	98
Western Meat Co. and others	107	107
New England Dressed Meat & Wool co. and others	112	112
Stipulation	116	116
Decree and consents	119	118
Petition of Southern Wholesale Grocers' Association and others for leave to intervene	131	131
Order granting petition to intervene	134	134
Intervening petition of Southern Wholesale Grocers' Association and others	135	134
Petition of National Wholesale Grocers' Association of the United States for leave to intervene	139	138
Motion to set aside order granting leave to intervene, etc.	142	140
Amended petition of Southern Wholesale Grocers' Association and order	142	141
Memorandum of decision on motion to strike out, etc.	146	144
Order overruling motion to strike out	147	145
Order allowing intervening petition to be filed	147	145

	Original	Print
Record from Supreme Court—Continued.		
Petition in intervention of National Wholesale Grocers' Association of the United States	147	146
Intervening petition of California Cooperative Canneries	149	147
Answer and objections to motion to intervene of California Cooperative Canneries	219	218
Answer of National Wholesale Grocers' Association of the United States to the petition of the California Cooperative Canneries for leave to intervene	230	229
Amendment praying leave to substitute American Wholesale Grocers' Association for Southern Wholesale Grocers' Association and order	262	262
Objections of Cudahy Packing Co. to motion of California Cooperative Canneries	263	263
Acknowledgments of service of petition of California Cooperative Canneries for leave to intervene	264	264
Memorandum of court	266	266
Petition of California Cooperative Canneries for rehearing	267	267
Answer and objections of American Wholesale Grocers' Association et al. to petition for rehearing	276	276
Notices of submission and acknowledgments thereof	301	300
Memorandum opinion	304	303
Final decree	305	304
Order allowing appeal	305	305
Memorandum re bond	306	305
Assignment of error	306	305
Praecipe for transcript of record	307	306
Clerk's certificate [omitted in printing]	308	307
Minute entries	309	307
Opinion, Van Orsdel, J	311	308
Decree	321	315
Mandate	322	315
Motion to vacate decision and mandate	326	317
Order denying motion to vacate	334	321
Praecipe for transcript of record	335	321
Clerk's certificate [omitted in printing]	337	322
Order allowing certiorari		322

1 [Caption omitted.]

2 In Supreme Court of the District of Columbia

In Equity

No. 37623

UNITED STATES OF AMERICA, PETITIONER

v.

SWIFT & COMPANY, ARMOUR AND COMPANY, MORRIS & COMPANY, Wilson & Co., Inc., and the Cudahy Packing Company et al., defendants

Petition

Filed February 27, 1920

To the honorable JUDGES OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, SITTING IN EQUITY:

The United States of America, by John E. Laskey, its attorney for said district, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, they being severally duly authorized to act in said capacities by proper lawful authority, acting under the direction of the Attorney General of the United States, brings this proceeding in equity against Swift and Company, a corporation organized under the laws of the State of Illinois; Armour and Company, a corporation organized under the laws of the State of Illinois; Morris & Company, a corporation organized under the laws of the State of Maine; Wilson & Co. (Inc.), a corporation organized under the laws of the State of New York; the Cudahy Packing Company, a corporation organized under the laws of the State of Maine (these corporations are hereinafter referred to as the parent companies); and the following-named corporations and individuals, to wit:

Armour defendants

Corporations:

Armour & Company, a corporation organized and existing under the laws of the State of New Jersey; Armour & Company, a corporation organized and existing under the laws of the State of Kentucky; Armour & Company, a corporation organized and existing under the laws of the State of Texas; Armour & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; The Anglo American Provision Company, a corporation organized and existing under the laws of the State of Illinois; The Colorado Packing and Provision Company, a corporation organized and existing under the laws of the State of Colorado; Fowler Packing Company, a corporation organized and existing under the laws of the

State of Maine; Hammond Packing Company, a corporation
3 organized and existing under the laws of the State of Illinois; The New York Butchers Dressed Meat Company, a corporation organized and existing under the laws of the State of New York; Atlantic Hotel Supply Company (Inc.), a corporation organized and existing under the laws of the State of New York.

Swift defendants

Corporations:

Swift & Company, a corporation organized and existing under the laws of the State of West Virginia; Swift & Company (Inc.), a corporation organized and existing under the laws of the State of Kentucky; Swift & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; Swift & Company, a corporation organized and existing under the laws of the State of Maine; Swift Beef Company, a corporation organized and existing under the laws of the State of Maine; United Dressed Beef Co. of New York, a corporation organized and existing under the laws of the State of New York; J. J. Harrington & Company (Inc.), a corporation organized and existing under the laws of the State of New York; Bimbler Company, a corporation organized and existing under the laws of the State of New Jersey; the G. H. Hammond Company, a corporation organized and existing under the laws of the State of Michigan; Omaha Packing Company, a corporation organized and existing under the laws of the State of Kentucky; Plankinton Packing Company, a corporation organized and existing under the laws of the State of Wisconsin; Sturtevant & Haley Beef & Supply Company, a corporation organized and existing under the laws of the State of Massachusetts; E. K. Pond Packing Company, a corporation organized and existing under the laws of the State of Illinois; Van Wagenen & Shickhaus Company, a corporation organized and existing under the laws of the State of New Jersey; Western Packing Company, a corporation organized and existing under the laws of the State of Colorado; Hammond Beef Company, a corporation organized and existing under the laws of the State of Michigan; Omaha Meat Company, a corporation organized and existing under the laws of the State of California; A. Canfield Commission Company, a corporation organized and existing under the laws of the State of New Jersey; H. C. Derby Company, a corporation organized and existing under the laws of the State of New York; Metropolitan Hotel Supply Company, a corporation organized and existing under the laws of the State of Maine; Vermont Supply Company, a corporation organized and existing under the laws of the State of Massachusetts; The Hotchkiss Beef Co., a corporation organized and existing under the laws of the State of New York; F. & C. Crittenden Company, a corporation organized and existing under the laws of the State of New York; George Nye Company, a corporation organized and existing under the laws of the State of Massachusetts; H. L. Handy Com-

pany, a corporation organized and existing under the laws of the State of Massachusetts; Swift Coats Company, a corporation organized and existing under the laws of the State of Massachusetts;

4 New England Dressed Meat & Wool Company, a corporation organized and existing under the laws of the State of Maine; North Packing & Provision Company, a corporation organized and existing under the laws of the State of Maine; the Sperry & Barnes Company, a corporation organized and existing under the laws of the State of Connecticut; John P. Squire & Company, a corporation organized and existing under the laws of the State of Maine; John P. Squire & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; John P. Squire & Company Incorporated, a corporation organized and existing under the laws of the State of Rhode Island; Springfield Provision Company, a corporation organized and existing under the laws of the State of New Hampshire; White, Pevey & Dexter Company, a corporation organized and existing under the laws of the State of Maine.

Morris defendants

Corporations:

Morris Packing Company, a corporation organized and existing under the laws of the State of Maine; Morris & Company, a corporation organized and existing under the laws of the State of New Jersey; Morris & Company, a corporation organized and existing under the laws of the State of Louisiana; Morris & Company, of Pennsylvania, a corporation organized and existing under the laws of the State of Pennsylvania; Joseph Stern & Sons (Inc.), a corporation organized and existing under the laws of the State of New York; Brooklyn Beef & Provision Co., a corporation organized and existing under the laws of the State of New York; Condit Beef & Provision Company, a corporation organized and existing under the laws of the State of New Jersey; Corwin Wilde Company, a corporation organized and existing under the laws of the State of Massachusetts; Donnelly & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; National Hotel Supply Company, a corporation organized and existing under the laws of the State of Illinois; Chamberlain & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; J. M. Wilson Company, a corporation organized and existing under the laws of the State of Massachusetts; Middletown Beef & Provision Company, a corporation organized and existing under the laws of the State of Massachusetts; Glenn & Anderson Co., a corporation organized and existing under the laws of the State of Illinois.

Wilson defendants

Corporation:

Wilson & Co., a corporation organized and existing under the laws of the State of New Jersey; Wilson & Co. (Inc.), a corporation

organized and existing under the laws of the State of Nevada; Wilson & Co. (Inc.), of Louisiana, a corporation organized and existing under the laws of the State of Louisiana; Wilson & Co. (Inc.), of Oklahoma, a corporation organized and existing under the laws of the State of Oklahoma; South Dakota Provision Co., a corporation organized and existing under the laws of the State of South
5 Dakota; Gotham Hotel Supply Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Standard Beef Co., a corporation organized and existing under the laws of the State of New York; Stiefel-O'Mara Co. (Inc.), a corporation organized and existing under the laws of the State of New York; Drexel Packing Co., a corporation organized and existing under the laws of the State of Illinois; Albert Lea Packing Co. (Inc.), a corporation organized and existing under the laws of the State of Virginia; Mississippi Packing Co. (Inc.), a corporation organized and existing under the laws of the State of Virginia; Morton-Gregson Co., a corporation organized and existing under the laws of the State of Delaware; Paul O. Reymann Co., a corporation organized and existing under the laws of the State of West Virginia; Standard Provision Co., a corporation organized and existing under the laws of the State of New Jersey; Central Products Corporation, a corporation organized and existing under the laws of the State of Virginia.

Cudahy defendants

Corporations:

Cudahy Packing Company of Nebraska, a corporation organized and existing under the laws of the State of Nebraska; Cudahy Packing Company of Alabama, a corporation organized and existing under the laws of the State of Alabama; Cudahy Packing Company of Louisiana (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; Nagle Packing Company, a corporation organized and existing under the laws of the State of New Jersey.

Other defendants

Corporations:

Western Meat Company, a corporation organized and existing under the laws of the State of California; Oakland Meat & Packing Company, a corporation organized and existing under the laws of the State of California; Nevada Packing Company, a corporation organized and existing under the laws of the State of Nevada.

These corporations are hereinafter referred to as the subsidiaries defendants.

Armour defendants

Individuals:

J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, George B. Robbins.

Swift defendants

Individuals:

Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, William B. Traynor.

6 Morris defendants

Individuals

Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane, Harry A. Timmins.

Wilson defendants

Individuals:

Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good.

Cudahy defendants

Individuals:

Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shephard, John E. Wagner, Andrew A. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples.

Other defendants

Individuals:

Fred L. Washburn.

These defendants are hereinafter referred to as the individual defendants.

Court's jurisdiction

The parent companies, either directly or through subsidiaries, are engaged in interstate and foreign commerce in (a) the purchase and slaughter of livestock; (b) the preparation and manufacture of dressed meats and edible by-products of the slaughter; (c) the curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal; (d the production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used; (e) the manufacture, canning, or otherwise preparing for the market, sale, and distribution of food supplies other than meats (these are hereafter referred to as substitutes for meat foods; (f) the manufacture and sale of various other articles commonly purchased and used either by the producer of livestock, the companies transporting the livestock or dressed meats or the competitors of the parent companies (these are hereinafter referred to as unrelated commodities).

By the unlawful means and methods hereinafter set out and complained of, the parent companies and the subsidiaries, defendants, acting by and through their principal officers, who have been made defendants herein, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities herein referred to, and which are necessary to the life, health, and welfare of the people
7 of the United States. And by the same or similar methods the said parent companies and the subsidiaries defendants are attempting to increase and extend said monopoly, and are enabled thereby and do artificially control the supply and the price of the food supplies of the Nation.

The Government in instituting this proceeding invokes the general equity powers of this court in addition to the authority conferred upon it and contained in the act of Congress dated July 2, 1890, and entitled "An act to protect trade and commerce against unlawful restraints and monopolies," said act being commonly known as the Sherman antitrust law, and further conferred and contained in act amendatory thereof and supplemental or additional thereto, and particularly the act known as the Clayton Antitrust Act dated October 15, 1914, being entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," which said acts by special provisions give to this court jurisdiction in all such matters as are set out in the following petition.

Object to be attained

This petition is filed and these proceedings are instituted to put an end to any and all monopolies which the defendants may have created or obtained in the interstate trade or commerce of livestock, meat products, and substitute foods, and to prevent the continuance of unlawful monopolies by the defendants, in the aforesaid trade or commerce in the products and commodities so described, and to deprive said defendants of certain instrumentalities, facilities, and advantages by which they have been enabled heretofore to more effectively perfect their attempts to monopolize; to compel the defendants to desist from dealing in certain of the substitute foods, and certain of the unrelated commodities; to limit in the manner hereinafter set forth, the interest which the individual defendants may have in corporations handling certain substitute foods and unrelated commodities; and to dissolve any and all contracts, combinations, and conspiracies in restraint of trade or commerce between the several States, which contracts, combinations, or conspiracies are more fully hereinafter described and to prevent said defendants from maintaining said contracts, combinations, or conspiracies with each other, or from entering into further contracts, combinations, or conspiracies with each other or with other persons.

The nature of the business and method by which it is conducted

The principal business of each of the parent companies, conducted by each company directly or through its subsidiaries, is the slaughter of livestock, consisting of cattle, hogs, sheep, and calves, the dressing of the carcasses, and the distribution of the dressed meat in interstate commerce through various means by which the dressed meat reaches the retail butchers and is by the retail butchers sold to the consumers.

8 Each of these concerns is the successor or natural outgrowth of concerns of many years' standing. In their inception these concerns devoted themselves exclusively to the slaughter of livestock, the dressing of the carcass, and the sale of the dressed meat to retail butchers or consumers. The invention of what are known as route cars and refrigerator cars, by means of which the dressed meats might be hauled long distances and preserved for a considerable length of time, free from decay, enabled the parent companies to widely extend their market so as to make it nationwide, and further enabled them to slaughter the livestock near the source of supply.

As the demand for livestock grew in volume the institution known as the stockyard was evolved.

The stockyards

The stockyard was and is in theory a public market place to which all who wish to either buy or sell may have free access and right to trade. The stockyards afford to the cattle raiser the opportunity to dispose of his livestock for an immediate cash price. Contiguous to such stockyards commission men, dealing exclusively in the sale of livestock, locate themselves. These commission men attend to the care of the livestock upon its arrival, effect the sale of the stock so consigned, attend to its weighing, collect the proceeds of the sale, and remit to the consignor after deducting customary commission.

Stockyards render certain services to the shipper, for which they make charge, to wit, yardage (furnishing the facilities and performing the services of placing and keeping the animals in pens and watering them), feeding, and selling food, weighing, dipping, bedding cars, and often loading and reloading.

The yardage charges are ordinarily based upon an arbitrary price per head for each kind of stock, but in some instances they are based upon the hundredweight. The charge for feed is fixed by the stockyards and includes the services rendered in feeding. The amount of the charges made or to be made for the other items of services or materials furnished is also fixed by the stockyards or those who are in control of the yards.

In connection with each stockyard there is need for certain facilities and conveniences for the benefit of either the shipper or the

buyer of the livestock. The stockyards, by reason of its dominating position, control these conveniences and facilities.

Conveniences and facilities controlled by stockyards

Packing-house sites:

In furtherance of the tendency to centralize the market, it became of advantage to establish the slaughterhouses and packing plants either in, or immediately adjacent to, the stockyards. The stockyard companies generaly own or control all the available land within the yards, and at most of the important yards the land
9 surrounding the yards is owned by companies controlled by the stockyard company or its principal stockholders. New packing companies, as a rule, can secure desirable packing sites only from the stockyard companies or from these land-development companies. The owners of stockyard companies are, therefore, in a position to determine what packing companies and how many plants shall be established at the yards.

Sites for stockyard banks and cattle loan companies:

The cattle raiser is in many instances dependent upon banks or loan companies to finance him in the rearing of his livestock and until such times as the stock shall have been sold. From the nature of the business it is a great advantage to these banks to locate in or near stockyards. It therefore lies within the power of the owner of the stockyard companies to designate how many and which banks or loan companies may establish themselves at the yards.

Rendering plants:

While in transit or after reaching the yards, livestock often die either from disease or accident. The stockyard companies, by virtue of their agreement with the commission men, are permitted to determine who shall buy the dead animals and the price which shall be paid therefor. This monopoly power has generally resulted in the establishment of only one dead rendering plant at each of the important yards:

Commission men's office space:

The commission men and traders at the stockyards must have offices in or near the yards. They can get such accommodations only from renting or leasing from the stockyard companies. For the purpose of furnishing such office space each yard has a large building or series of buildings in which offices are leased to the commission men. The commission men are allotted pens, and inasmuch as it of great advantage to commission men to be able to dispose of his customer's livestock at the earliest possible hour, location of pens most favorable to the prospective buyer is of great advantage.

Terminal railways:

The centralization of the market at one site and the resultant growth of the packing houses in or about the market of necessity

require terminal railways to facilitate the switching of cars from the railroads to the stockyards, from the yards to the packing plants, and from the packing plants to the railroads. These terminal or stockyard railways are usually owned by the stockyard companies or by those in control of the stockyard companies. Control of these railways carries with it the power to grant or withhold sidings, spurs, or other accommodations which may be required by the packing house, and those in control of said terminal railways are thereby in a position to discriminate against other packers or independent buyers by practicing delay in loading the animals bought by said packers or independent buyers and in switching the loaded cars to the connecting lines.

Market papers and journals:

In addition to having a free market in which to dispose of his livestock, the cattle raiser requires full, accurate, and unbiased reports of the demand for livestock, the prices prevailing, and the character and kind of stock required, together with such other information as to market or trade conditions. The cattle raiser, of necessity, is located at places remote from the market; he rarely accompanies his shipment to the market; and by reason of the cost of shipment and of feeding in transit and while being held for sale it is imperative that he dispose of his stock when once he has shipped. For his guidance the cattle raiser relies largely upon the trade papers and journals. Control of these papers and journals furnishes a means whereby the flow of stock to the market may be increased or decreased to the benefit of the slaughterer.

It is, therefore, evident that control of the stockyards and of the other facilities appertaining to the stockyards carries with it:

(a) A profit derived from the meat industry levied upon it and collected before the animal is slaughtered, all of which profit, however, evidences itself in the ultimate cost which the consuming public must pay for the dressed meat.

(b) A potential means of favoritism in dealing with commission men and of influence over them, a power to grant monopolies—carrying with it consequent profit—to banks, cattle-loan institutions, rendering plants, to concerns supplying food for livestock, and to others.

(c) A means to prevent the establishment of new packing plants and to hamper the growth of those in existence.

(d) A means to prevent the development and limit the number of new markets and to centralize and restrict business to the stockyards so controlled.

(e) Peculiar and exclusive access to information concerning the receipts and sale of livestock, its disposition, and the dissemination of information to the producer.

Branch houses, route cars, autotrucks, and cold-storage warehouses

Branch houses:

The primary means adopted by the parent companies in the distribution of their dressed meats are the branch houses. These houses are storage stations located in the cities and larger towns. They are equipped with facilities for cooling and preserving the meats, and each is under the charge of a branch-house manager, under whose direction the branch-house sales organization sells to retail and wholesale butchers, to purveyors, hotels, restaurants, and other similar large consumers. The parent companies maintain 1,120
11 branch houses in various large towns and cities throughout the United States, as against which all other interstate slaughterers, independent of the parent companies, maintain only 139.

Route cars:

The route cars supplement the branch houses. They serve the purpose of reaching these small communities where the trade is not sufficiently large to justify investment in a branch house. These route cars travel over what are known as car routes. Orders are taken in advance and the route cars reaching specified towns on specified dates serve the requirements of the smaller communities. The starting point for the route cars is usually the packing plant, though in some instances the route car starts from a branch house. The parent companies operated as of June, 1918, 1,297 route cars, which constituted 90 per cent of the total number operated in the packing industry. Said route cars reach and serve dealers in 37,176 towns, and operate in 37 of the States of the United States.

Autotrucks:

This is a further development of the route-car plan. It had its origin in the development of the motor truck, and because of its freedom from railway limitations and schedules it is enabled to reach a wider radius and smaller towns than is the route car.

The autotrucks have been adopted primarily by Armour & Co. as a supplement to the car routes. These autotrucks reach and serve a total of 20,836 towns throughout the United States.

Cold-storage warehouses:

The cold-storage warehouses were in the beginning adopted as an instrumentality for enabling the parent companies to extend the volume of their slaughter of livestock and sale of dressed meat. In the first instance they were used for chilling meat in connection with the packing business. Then they were constructed in connection with the branch houses, so that they might be used for storing and holding the finished meats until they were sold. Later they were either built or acquired in the large eastern seaboard cities for long-time storage and for storing for export. As will be more fully set forth hereafter in discussing the control of substitute foods, these storage warehouses were later employed to store nonmeat-food products. Later control was acquired over public storage warehouses where surplus

space was leased or let to others. Later it will be pointed out how control of this public storage warehouse was employed to aid in control of the price of meats and substitute foods.

The parent companies' acquisition of above-described facilities and their purpose in doing so

The parent companies and their controlling heads, appreciating the advantages which were to be gained by controlling the
12 stockyards and the facilities pertaining thereto, the terminal railways and market papers and trade journals, and realizing that the requisition of such instrumentalities might thus enable them to obtain a primary profit not only out of the sale of livestock purchased and slaughtered by them but also on that purchased and slaughtered by their competitors, and realizing the opportunities thereby to repress and discourage the development of independent packers and slaughterhouses and to control the shipments of meat to the various markets, set about the acquisition of the various stockyards and the appurtenances and privileges incidental thereto. This in many instances was done by a concert of action and pursuant to a common understanding. In most instances the acquisition of control of the aforesaid stockyards by any one or more of the parent companies was acquiesced in by the others and in all instances the ownership or control of stockyards by other packers or by any one in fact other than the parent companies or one of their members or their controlling heads, was discouraged and opposed.

In pursuance of a common purpose, plan, and design, outside investors and independent packers have gradually been forced out as dominating factors both in the ownership and management of most of the important stockyards and have been replaced by the parent companies or their representatives. This acquisition has been accomplished by various methods: In the earlier years by exacting stock donations under threats of moving away their packing plants, later by cash subscriptions for stock, generally below par, and in other instances by voluntary reorganization of stockyard companies in order that the parent companies and their controlling heads might gain a controlling or dominating power in the yards and thus be induced to continue to maintain their packing plants thereat. By these various means the parent companies directly, or indirectly through their controlling heads, have been enabled to obtain control of substantially all of the large stockyards of the country. They now have, either jointly or separately, a controlling interest in 22 of the 50 market stockyards in the United States.

The parent companies have availed themselves of the control so acquired by them in the stockyards aforesaid to elect the officers and directors of said stockyards and to dominate and control the policies thereof. They have granted exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities and the location of cattle banks and cattle loan companies, to

concerns and corporations in which they or some of them or individuals who are stockholders in said parent companies, hold the controlling stock, and they have otherwise, acting in concert, employed the powers and privileges more specifically set forth and discussed under the heading "Nature of the business and method by which it is conducted"; all of which has been done with the intent and purpose of, and has had the effect of discouraging and suppressing the establishment of independent packing establishments and dwarfing the growth of such independent packing companies as might then be in existence, and to enable said parent companies, their
13 subsidiaries or the individuals who own and control the parent companies and their subsidiaries to obtain vast profits from the management of the stockyard and the granting of the privileges appurtenant thereto, which profits are realized not only upon the livestock purchased by the packers but upon that purchased by their competitors. These methods have thus enabled them to enjoy and realize such profits without the same appearing or being disclosed in the profits of the parent companies; they have also furthered the attempt of said parent companies to monopolize their meat industry of the country and to artificially control the ultimate price which the consumer pays for meat and meat products.

Contracts in restraint of trade

The parent companies have entered into certain unlawful contracts and combinations to restrain trade and commerce and to artificially prevent between themselves competition in the prices for which meat and meat products are sold.

The most important of said contracts and agreements is what is known as the percentage purchase arrangement. This arrangement, though applied primarily in the purchase of livestock, had as its ultimate object the elimination of competition, not only in the purchase of livestock but also in the sale of dressed meats. It is a well-established commercial principle that a limitation upon the source of supply and the consequent limitation upon volume of business are the easiest means of removing all incentive to reduce prices.

The simplest way to limit the volume of dressed meat is to limit the purchase of livestock.

Recognizing these principles, the parent companies thereupon agreed upon and thereafter recognized between themselves certain percentages or proportions to which they deemed that each company was entitled, and they thereafter so gauged their purchases that annually their respective purchases approximated actually or substantially the percentages so agreed upon.

As a means of perfecting this arrangement, divers percentages varying at different stockyards were agreed upon, and understandings were had that certain of the parent companies should buy in certain yards or should refrain from buying in certain stockyards. In order to prevent such plans from being disarranged by outsiders

agreements were made with such outsiders by which purchases between the parent companies and the independents were effected upon a percentage basis similar to the above.

Means were adopted and by virtue of the parent companies' control over many of the stockyards were easily executed by which sales to outsiders or independents were controlled by the parent companies.

Control over the stockyards, the stockyards loan institutions, the terminal railways, and other privileges and perquisites has discouraged any opposition by either commission men or independent packers.

14 Control of substitute foods

Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience had taught them that if meat prices advanced out of proportion to that of other substitute foods, the consuming public manifested a tendency to turn to such substitutes. To prevent this the defendants set about controlling the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose the defendants availed themselves of the advantages afforded by the refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them. These facilities intended primarily for the sale of meats were employed with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities. The defendants were enabled thereby to reach remote spots. This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition.

These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table.

Extent to which the monopolistic attempts have been successful

Financial growth, present net worth, and volume of business: In the 15 years from 1904 to 1919, Swift & Co., Armour & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co., according to their financial reports, grew from a net worth of approximately $92,000,000 to a net worth of approximately $479,000,000, and in this same period they paid in cash dividends $105,000,000. Only $89,000,000 of their increased worth represented new capital. Though

always asserting a very low rate of profit on sales, the five parent companies have grown so rapidly that their combined net profits for 1917 have equaled nearly the amount of their total net worth in 1904. Sales in 15 years have increased until for the fiscal year 1918 they reached the vast sum of $3,200,000,000. This was realized from meats, substitute foods, and unrelated lines, as hereinabove set forth. In stating these figures account has been taken only of the profits and sales of the parent companies and subsidiaries included by them upon their books. No account has been taken of the many
15 corporations which are owned or controlled by the same family or financial interest as own or control the parent companies.

In addition to these profits there have been other vast profits, difficult of ascertainment, realized by the individuals by virtue of either their personal control of other packing houses and slaughtering companies or their interest in stockyards, terminal railways, rendering companies, cattle-loan institutions and banks, and other corporations, all of which corporations have their inception and depend for their prosperity upon advantages or privileges growing out of the interlocking control of the stockyard and stockyard appurtenances.

Number of controlled companies

The parent companies or the individual defendants and their families maintain and control 574 corporations or concerns, including 131 trade names. They have a significant minority stock interest in 95 others and an interest of unknown extent in an additional 93. Thus the total number of concerns in which they have control or interest is some 762. In the years that are past the parent companies have acquired or organized many other concerns and have maintained them so long as they were useful for their purposes. When no longer useful those concerns, so acquired or organized, have been dissolved and their businesses have been merged into that of the parent companies or that of other subsidiaries. Such dissolved corporations and concerns are omitted in the above compilation except in those instances where their names have been continued as trade names. The total of 762 above stated, therefore, falls far short of representing the number of concerns that corporate and individual defendants have acquired or have organized in furtherance of the general scheme and plan of action already explained.

Extent of industrial control in the substitute foods and unrelated commodities:

It would be an enormous undertaking to determine the degree of control exercised by the defendants in all of these various industries. Enough has been ascertained to indicate that the growth has been rapid and that if permitted to continue unchecked, in a matter of a few years the control will be complete.

In 1916 the business of Armour & Company in canned fish, vegetables and sundries, canned and dried fruits, fruit preserves (soda fountain supplies) and grape juice amounted to $6,396,056.75; in

1918, two years later, the same company's volume of business in these same items was $39,820,000, over a sixfold increase. While part of this increase of business may be attributed to the increase of population and the consequent increase of consumption, the greater part thereof was acquired at the expense of competitors. Of the corporations which have been acquired by the parent companies in recent years, a large number are concerns manufacturing or selling these substitute foods or unrelated commodities. This fact, together with the increased activities of the parent organizations, themselves, in these lines indicates a well-defined purpose on their part to secure control of the market for meat-substitute foods. In addition to the companies whose control has been acquired by outright purchase, the parent companies have, in a large number of instances, contracted for the exclusive output of many other companies engaged in the production of the substitute foods and the unrelated commodities. The outputs of these plants are marketed by the parent companies or by their subsidiaries through the distribution facilities of the parent companies. In this fashion the parent companies control the output of these concerns and the market price of their products as completely as though they themselves owned the producing companies.

16

Individual defendants

The individual defendants are either officers, directors, agents, or employees of the parent companies or their subsidiaries or large stockholders of parent companies and subsidiaries who are otherwise affiliated in commercial operations with the active heads of the parent companies. These individual defendants are in their individual capacity financially interested to a great extent in the stockyards, terminal railways, cattle loan banks, rendering companies, and other institutions interrelated with the stockyards. They, or some of them, control the corporations dealing in the substitute foods and the unrelated commodities. In many instances, in addition to their individual holdings, they hold stock in these corporations for the benefit of the parent companies. The control by these individuals of the facilities or instrumentalities of the meat business and their interest in concerns dealing in the substitute foods and the unrelated commodities enable the parent companies to carry out the purpose of the combinations hereinabove described, and are now and will continue to be a sinister and ever-present means of furthering the attempt to monopolize and perfect it to such a degree that the parent companies or their subsidiaries will have complete control not only of meat products but of all substitute foods consumed in the United States.

Subsidiaries defendants

These comprise many, but not all, of the subsidiaries owned or controlled by the parent companies. Only these subsidiaries which

are substantially 100 per cent parent-company owned and which are engaged either in the slaughtering, packing, or selling of meats have been made parties defendants. It is the plan and scheme of this petition and the prayer for relief that the corporations which in themselves own the facilities more specifically described above or deal in the substitute foods and unrelated commodities shall not be made parties defendants in the first instance or until it appears that they are necessary parties defendants, but that the parent companies, the subsidiaries defendants, and the individuals should be compelled to divest themselves of all interest in or connection with the
17 subsidiaries owning the facilities or dealing in the substitute foods or commodities referred to.

Prayer

Wherefore, petitioner prays.

I. That the defendants, and each of them, be forever enjoined from continuing any contract, combination, or conspiracy in restraint of trade or commerce in the purchase of livestock, or the purchase, sale, or distribution of dressed meats or other products or commodities now handled by them, or any of them, among the several States or foreign nations, which contract, combination, or conspiracy may now exist between them, or any two or more of them, or from doing any act pursuant to or in furtherance of any such contract, combination, or conspiracy, and that they be enjoined from entering into any other or further contract, combination, or conspiracy, either among themselves or among any two or more of them, or with any other person or persons whatsoever, in restraint of trade or commerce between the several States and foreign nations.

II. That they, and each of them, be enjoined and forever restrained from monopolizing, or attempting to monopolize, or conspiring to monopolize, the trade or commerce between the several States or with foreign States in the purchase, sale, or distribution of livestock or the commodities aforesaid.

III. That the defendants, and each of them, be required to divest themselves to such extent and upon such terms and conditions as the court may deem proper from such interest in or control over public cold-storage warehouse, retail meat markets, stockyards, terminal railways, market or trade journals, or such other facilities as are connected with or are appurtenances to the stockyards, in such instances as the court may deem that such instrumentalities constitute a means of facilitating the formation or continuance of monopolies in the purchase of livestock or the sale of the commodities aforesaid.

IV. That the corporation defendants, and each of them, be perpetually enjoined from permitting their refrigerator cars, route cars, auto trucks, or branch houses, or other distributive facilities to be used for the distribution or sale of commodities of the character and kind hereinbefore generally described as substitute foods and unre-

lated commodities in such instances and to such extent as the court may deem necessary for the purpose of preventing the aforesaid defendants from acquiring a monopolistic control over the trade or commerce in such commodities, or a control which may enable them to restrain the trade or commerce or artificially affect the price of any commodities in which the aforesaid defendants now deal.

V. That the defendants and each of them be required to divest themselves of all stockholdings or other interest in any corporation, partnership, or association now dealing in any of the food substitutes or unrelated commodities hereinbefore more specifically de-
18 scribed, and that wherever said defendants own, operate, or control a department buying, selling, or otherwise distributing substitute foods, unrelated commodities, or any of them, that they be required to discontinue the aforesaid department, and that the defendants and each of them be restrained and perpetually enjoined from hereafter acquiring any stockholdings or interests of the character hereinbefore described, in any corporation dealing exclusively or partially in the said substitute foods or commodities hereinbefore referred to, or from themselves engaging in such business, either directly or through a department.

VI. That the defendants and each and every one of them be perpetually enjoined from indulging in any unlawful practice or committing any act of unfair competition or any other act with the purpose of or which may have the effect of unduly restraining trade and commerce, or which may be indulged in or done with the purpose or effect of monopolizing said trade or commerce in the commodities now manufactured, bought, sold, or otherwise dealt in by the defendants or any one of them.

VII. That your petitioner be granted such other and further relief as the nature of the case may require and the court may deem just and proper in the premises.

To the end, therefore, that the United States may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant writs of subpœna directed to each and every one of said defendants, commanding them and each of them to appear herein and answer, but not under oath (answers under oath being hereby expressly waived), the allegations contained in the foregoing petition, and to abide by and perform such order or decree as the court may make in the premises, and upon final hearing hereof to permanently enjoin each of the defendants as hereinbefore prayed.

Respectfully submitted.

JOHN E. LASKEY,
United States Attorney.

A. MITCHELL PALMER,
Attorney General.
ISAIOR J. KREISEL,
JOHN H. ATWOOD,
JOSEPH SAPINSKY,
Special Assistants to the Attorney General.

Answer of Swift & Company and others
Filed February 27, 1920

19 In Supreme Court of the District of Columbia

[Title omitted.]

The joint and several answer of the following-named defendants to the bill of complaint filed herein:

Corporations:	Organized under laws of—
Swift & Company	Illinois.
Swift & Company	West Virginia.
Swift & Company (Inc.)	Kentucky.
Swift & Company (Ltd.)	Louisiana
Swift & Company	Maine.
Swift Beef Company	Maine.
United Dressed Beef Co. of New York	New York.
J. J. Harrington & Company (Inc.)	New York.
Bimbler Company	New Jersey.
The G. H. Hammond Company	Michigan.
Omaha Packing Company	Kentucky.
Plankinton Packing Company	Wisconsin.
Sturtevant & Haley Beef & Supply Company	Massachusetts.
E. K. Pond Packing Company	Illinois.
Van Wagenen & Schickhaus Company	New Jersey.
Hammond Beef Company	Michigan.
Omaha Meat Company	California.
A. Canfield Commission Company	New Jersey.
H. C. Derby Company	New York.
Metropolitan Hotel Supply Company	Maine.
Vermont Supply Company	Massachusetts.
The Hotchkiss Beef Co.	New York.
Western Packing Company	Colorado.

Individuals:

Louis F. Swift.	Alden B. Swift.	Wilfred W. Sherman.
Edward F. Swift.	George H. Swift.	Wellington Leavitt.
Charles H. Swift.	Laurence A. Carton.	John M. Chaplin.
Gustavus F. Swift, jr.	Frank S. Hayward.	William B. Traynor.
Harold H. Swift.	Charles A. Peacock.	

20 These defendants now and at all times hereafter saving unto themselves all and all manner of benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainants' said bill of complaint contained, for answer thereto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

Court's jurisdiction

These defendants admit that Swift & Company referred to in said bill of complaint as a parent company, either directly or through subsidiaries, is engaged in—

(a) The purchase and slaughter of livestock.

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered livestock.

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animals.

(d) The production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used.

(e) The manufacture, canning, or otherwise preparing for the market, sale, and distribution of certain food supplies other than meats.

(f) The manufacture and sale of various other articles commonly purchased and used either by the producer of livestock, the companies transporting the livestock or dressed meats, or the competitors of the parent companies.

But these defendants allege that the business and transactions in which said Swift & Company is alleged in the bill of complaint to be engaged are not interstate or foreign commerce, and no facts are alleged in the bill of complaint which constitute interstate or foreign commerce.

These defendants deny that the various other articles described in said subdivision "(f)" as manufactured and sold by said Swift & Company, either directly or through subsidiaries, are articles or commodities unrelated to the business of said Swift & Company as is impliedly charged in the bill of complaint.

These defendants deny that they or any of them have made any contract or in any manner or by any act, method, or means have engaged in or are or have been a party to any combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations.

These defendants deny that they or any of them in any manner or by any act, method, or means have monopolized or attempted to monopolize, or have combined or conspired with any other person, persons, firm, or corporation to monopolize any part of the trade or commerce among the several States or with foreign nations.

These defendants deny that Swift & Company, one of the "parent companies," referred to in the bill of complaint, and its subsidiaries together with the other so-called "parent companies" and their
21 subsidiaries, or otherwise, acting by and through their principal officers or otherwise, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities, referred to in the bill of complaint, as charged therein.

These defendants deny that said Swift & Company and its subsidiaries, together with the other so-called "parent companies" and their subsidiaries, or otherwise, are attempting to increase and extend said alleged monopoly of the products and commodities referred to in the bill of complaint, as charged therein; and these defendants deny that the said parent companies and their subsidiaries artificially control the supply and price of the food supplies of the Nation, as charged in the bill of complaint.

Object to be attained

These defendants deny that they or any of them have created or obtained any monopoly in the interstate trade or commerce of livestock, meat products, and substitute foods, as charged in the bill of complaint; and these defendants deny that any monopoly by the defendants named in the bill of complaint exists, as is charged in the bill of complaint. These defendants deny that there has been or is in existence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce among the several States.

On the contrary, these defendants allege that said Swift & Company and its subsidiaries, and as they are informed and believe, and therefore allege, that each parent company and its subsidiaries described in said bill of complaint are in actual and keen competition with each and every other parent company and its subsidiaries, so that the extent to which these defendants may dominate, control, or monopolize the food supply of the Nation depends upon the volume of business done by said Swift & Company and its subsidiaries compared to the total volume of business done by all engaged in supplying the food supply of the Nation.

These defendants allege that said Swift & Company and its subsidiaries handle only approximately 12 per cent of the total meat supply of the country and only approximately 22 per cent of the output of meats and meat products of the numerous plants engaged in the meat-packing business which ship meat in interstate commerce, and allege that said Swift & Company and its subsidiaries likewise handle only approximately 6 per cent of the total quantity of butter, eggs, and poultry which enters trade channels in the United States; and only approximately 15 per cent of all cheese sold in the United States; and only approximately 20 per cent of the total production of oleomargarine in the United States; and less than 15 per cent of the total quantity of lard substitutes sold in the United States; and less than 5 per cent of the total quantity of canned fruits and canned vegetables sold in the United States; and less than 15 per cent of the output of hides in the United States; and these
22 defendants allege that the volume of business thus handled by said Swift & Company and its subsidiaries is too small a part of the total volume of business in said respective lines of business to even suggest the possibility that Swift & Company could dominate, control, or monopolize any or all of such lines of business, or could control or manipulate the prices charged and received by it in the sale of commodities in said business.

These defendants allege that even if the five parent companies mentioned in the bill of complaint and their respective subsidiaries acted in agreement or combination (which these defendants deny), the business of said five parent companies and their subsidiaries would not and could not dominate, control, or monopolize the food supplies of the Nation, but, on the contrary, would be less than 40

per cent of the meat supply of the United States; and less than 15 to 20 per cent of the quantity of butter, eggs, and poultry which enters trade channels in the United States; and only about 3 per cent of the total sale of grocery products at wholesale in the United States; and not more than 45 per cent of the output of hides in the United States; and not more than 16 to 17 per cent of the cattle, calf, and sheep leather output of the United States.

These defendant allege that even if the five parent companies in said bill described acted together by agreement or combination (which these defendants deny), said companies so acting together would not and could not dominate, control, and monopolize said respective businesses or the food supplies of the Nation, nor could said five parent companies control or manipulate the prices of commodities sold by them respectively; and therefore these defendants allege that it is obvious that there is and can be no danger whatsoever that "within the compass of a few years" the packers will "control the quantity and price of each article of food found on the American table," as charged in the bill of complaint.

These defendants allege that if any one or all of said defendants dominated, controlled, or monopolized a very great proportion of the food supplies of the Nation, such domination, control, or monopoly would necessarily appear in the profits made by such defendant or defendants upon the sale of their products. These defendants deny that such domination, control, or monopoly exists, and allege that said Swift & Co. is not a party to any such domination, control, or monopoly, and alleges that the profit of said Swift & Co. from all sources for the fiscal year 1919 was only $1\frac{1}{6}$ cents on each dollar of sales and averaged only approximately one-fourth of 1 cent on each pound of all products of every description sold, and that such profit is so small as to have practically on effect on prices charged by Swift & Co. and its subsidiaries for their products; and, further, that said $1\frac{1}{6}$ cents on each dollar of sales includes the profits received by said Swift & Co. and by all its subsidiaries upon all products sold by them, including meat products and by-products of every description. These defendants allege that neither these defendants nor any of them would be satisfied with such a nominal profit upon their business if they had the power through domination, control, or monopolization of trade to obtain a reasonable profit upon the sale of their products.

23 The nature of the business and method by which it is conducted

These defendants admit that the principal business of said Swift & Company, directly or through its subsidiaries, is the slaughter of livestock, the dressing of the carcasses thereof, and the sale of the dressed meat and of the by-products resulting from the slaughter of livestock; but these defendants deny that said business as described in the bill of complaint is interstate commerce.

These defendants admit that the invention of the refrigerator car made it possible to slaughter livestock and prepare the fresh meat

thereof for market at or near the great sources of supply in the West and to preserve the meat in transit to the consuming public in the East, and these defendants allege that great losses from shrinkage in weight of, injury to, and death of the livestock in transit were thereby saved, which losses had theretofore been an incident in the shipment of the live animals; and further allege that the invention of the refrigerator car, by preventing such losses and by preventing other losses, such as bruises to the hides of animals shipped long distances, which materially reduce the value of such hides when cured, revolutionized the livestock and fresh-meat business of the country, developed the livestock industry, and cheapened the cost of meats and animal by-products to the consumer, and was therefore of incalculable benefit to the public.

These defendants deny that they have any exclusive right to or monopoly over refrigerator cars; which fact may be inferred from the allegations in the bill of complaint. These defendants allege that any and all who desire to do so may secure, own, and furnish such refrigerator cars to the railroads for the purpose of carrying their products under the same terms, conditions, regulations, and tariffs of the railroads that the railroads require of these defendants.

The stockyards

These defendants admit that stockyards are public market places, to which all who wish may have free access and right to trade. These defendants allege that the stockyard companies do not buy or sell livestock at the stockyards or interfere with or affect in any way the trading between the livestock raisers or their agents, on the one hand, and the buyers on the other.

These defendants allege that they have likewise improved and them, by purchasing livestock shipped to the stockyards adjacent to their respective packing plants, have afforded and do afford the opportunity to the cattle raiser to dispose of his livestock for an immediate cash price at any and all times, in times of glut as well as in times of scarcity, and said defendants have by this means established and developed such stockyards and encouraged the growing of livestock.

These defendants allege that they have likewise improved and made attractive to livestock raisers the stockyards in which they have been interested, by promptly furnishing at great expense all
24 facilities and conveniences necessary or suitable to the receiving, caring for, and handling of livestock, and have thus developed and encouraged the growing of live stock.

Conveniences and facilities controlled by stockyards

Packing-house sites:

These defendants admit that as to all stockyards in which they are interested the stockyard companies generally own all the available land within the yards. These defendants deny that at any stock-

yards in which they are interested all the land surrounding the yards is owned by companies controlled by the stockyard company or its principal stockholders. These defendants allege that in many instances stockyard companies or companies controlled by the stockyard company or its principal stockholders have bought some land adjacent to the yards for the purpose of providing for the growth of the yards and for the establishment of additional packing plants at said yards whenever such opportunity offered. These defendants deny that new packing companies, as a rule, can secure desirable packing sites only from the stockyard companies or from the companies owned or controlled by said stockyard companies or their principal stockholders; and these defendants deny that stockyard companies, as a rule, are in a position to determine what packing companies and how many plants shall be established at the various stockyards, as charged in the bill of complaint.

These defendants allege that it is necessary, in order to develop a market at stockyards and to encourage the owners of livestock to ship their livestock to the stockyards, that there be a number of packing companies or other purchasers ready to buy livestock presented for sale at said stockyards and ready to buy said livestock at all times, so that there will always be a steady competitive and attractive market to which livestock producers may ship their livestock with the assurance that they will find a fair and prompt market therefor. These defendants allege that for said reason it is to the interest of the stockyard company and its stockholders to establish new packing plants at or adjacent to the stockyards, and these defendants therefore allege that it is good business foresight to acquire in advance at least some available land at or adjacent to the stockyards.

Sites for stockyard banks and cattle-loan companies:

These defendants allege that banks and cattle-loan companies are established for the purpose of supplying to livestock producers funds which before the development of such specialized institutions as cattle-loan companies have not been easily available, and therefore it is to their interest and that of the stockyard companies to facilitate the establishment of such institutions at or adjacent to the stockyards.

These defendants admit that a stockyard company has the power to designate how many and which banks or cattle-loan companies may establish themselves within the yards which the stockyard company owns, but these defendants deny that any stockyard company in which they or any of them are interested, or these defendants or any of them have ever exercised such power arbitrarily or to the detriment of the interests of the livestock raiser or have ever exercised such power at all. These defendants take pride in pointing out the part they respectively have played in financing the livestock industry through the encouragement of such livestock banks and cattle-loan companies.

Rendering plants:

These defendants admit that the stockyard companies generally find it necessary to determine who shall purchase carcasses of animals which have died from disease or accident while in transit or after reaching the stockyards, but these defendants allege that the number of animals dying from disease or accident while in transit or after reaching the stockyards is generally not sufficiently large to attract capital or justify the existence of more than one company to handle such dead animals and generally no one company would undertake to perform the service or would invest the capital necessary to equip itself to perform the service of removing dead animals from the premises of the stockyards company if it were not assured of a sufficient volume of such business to justify such undertaking.

These defendants allege that the maintenance of a sanitary condition at the stockyards requires the prompt removal of such dead animals, and experience has shown that in order that such service may be rendered promptly and efficiently it is generally necessary to regulate such business and enter into an arrangement with any company seeking to perform such service, under which such company will agree to be ready at all times to perform such service promptly and efficiently. These defendants deny that the prices which have been fixed for such dead animals at stockyards where they or any of them have been interested are or have been arbitrary, unreasonable, or unjust.

Commission men's office space:

These defendants allege that no one office can be leased and no one pen can be allotted to more than one commission man at a time; that necessarily some offices and some pens are more advantageously located than others; but these defendants deny the implied charge contained in the bill of complaint that there is discrimination on the part of any stockyard company in which they or any of them are interested in leasing office space and other accommodations and in allotting pens to commission men and traders at the stockyards.

Terminal railways:

These defendants allege that the terminal railways, to facilitate the switching of cars from trunk-line carriers to the stockyards, from the stockyards to the packing plants, and from the packing
26 plants to the trunk-line carriers, are common-carrier railroads engaged in intrastate and interstate commerce, and that they are subject to the railroad commissions of the several States in which such railroads may be located and to the Interstate Commerce Commission of the United States; that under the laws of the several States and under the interstate commerce act of the United States it is illegal for such common-carrier railroads to discriminate between shippers in the location of sidings, spurs, or other accommodations, and severe penalties are prescribed under the several statutes aforesaid for such discriminations.

These defendants deny that there is or has been any discrimination against any packer or buyer by any stockyard terminal railway operating at any stockyards, described in the bill of complaint, in which they or any of them are interested; these defendants deny that any such terminal or stockyard railway has practiced any discrimination in granting or withholding sidings, spurs, or other accommodations required by any packing house, or by delay in loading animals brought at stockyards served by said railways, or in switching; and these defendants allege that in the operation of the stockyards and terminal railways described in the bill of complaint, in which they or any of them are interested, service is given to all alike without favoritism toward any shipper, dealer, packer, or buyer.

Market papers and journals:

These defendants deny that the control of trade papers and journals has been used by them or any of them as a means whereby the flow of stock to the market may be increased or decreased to the benefit of the slaughterer, and these defendants allege that the only object of these defendants, or any of them, in owning or controlling trade or market journals has been to furnish adequate market information, including accurate price statistics and quotations, which were not otherwise available.

These defendants further allege that the establishment of such trade or market journals has been an important factor in affording better and more accurate information to livestock producers and shippers as to the conditions of the respective markets to which they desired to ship their livestock.

These defendants deny the inferential charge contained in the bill of complaint that it is unlawful or improper for the parent companies mentioned in the bill of complaint or any of them to own, operate, or control the stockyards and facilities appertaining to stockyards or to derive a profit from such ownership, operation, or control of such stockyards.

These defendants allege that the operation of stockyards costs large sums of money and requires the investment of large capital, whether such stockyards are owned by these defendants or by others, and the investors in such facilities must derive a profit if they are to continue to keep their capital invested therein. These defendants further allege that the profits derived by these defendants or
27 any of them from the operation of such facilities are only a reasonable return upon the investment and the capital employed and for the services performed; and these defendants deny that the charges made by the respective stockyards companies in which they or any of them are interested, for their respective services, would be lower were the stockyards operated by others than by these defendants. These defendants allege that the expense and the reasonable profits of operating such stockyards must enter into the final prices charged for meats, without reference to what interests own or operate such yards.

Said Swift & Company alleges that it is to its interest and it desires to have well-equipped and efficiently operated stockyards in connection with and adjacent to its packing plants, so as to attract adequate supplies of livestock for slaughter in such packing plants.

These defendants deny that control of stockyards and facilities appertaining to stockyards is used by these defendants or any of them as a means of favoritism in dealing with commission men. They deny that such control of stockyards and other facilities appertaining thereto has resulted in any discrimination by these defendants in favor of banks, cattle loan institutions, rendering plants, and concerns supplying food for livestock, which are located at or near to any of the stockyards described in the bill of complaint.

These defendants deny that control of stockyards and facilities appertaining thereto has been used by these defendants, or any of them, as a means to prevent the establishment of new packing plants or to hamper the growth of those in existence.

These defendants deny that control of stockyards and facilities appertaining thereto is or has been used by the defendants as a means to prevent the development and limit the number of new markets or to centralize and restrict business to the stockyards so controlled. These defendants deny that the control of stockyards and facilities appertaining thereto affords peculiar and exclusive access by these defendants to information concerning the receipts and sale of livestock, its disposition, and the dissemination of information to the producer.

Branch houses, route cars, auto trucks, and cold-storage warehouses

Branch houses:

These defendants deny that the branch houses operated by the said Swift & Co. are merely storage stations, but these defendants allege that such branch houses are established and operated for the purpose of facilitating the sale and distribution of products produced and sold by said Swift & Co. and its subsidiaries.

These defendants allege that Swift & Co. and its subsidiary companies own or operate approximately only 400 branch houses in the United States and that said branch houses are operated in actual and keen competition with all of the branch houses operated by the other parent companies and their subsidiaries described in the bill of complaint. These defendants further allege that the number
28 of branch houses operated by the larger packers who are engaged in shipping commodities from one State to another is greatly in excess of the number operated by small packers doing a local business and not engaged in shipping their commodities from State to State and who, therefore, do not require branch houses in distant cities. These defendants further allege that a widespread selling organization is absolutely essential to the larger packer for the efficient marketing in the consuming markets of the East of the livestock products which are produced in the West.

Route cars and auto trucks:

These defendants allege that there is no significance in the fact that the five large packers operate 90 per cent of the car routes operated by the whole packing industry in the United States, for the reason that, and these defendants allege that, said car routes of the respective parent companies are operated in competition with each other and, further, that small packers doing a local business have no occasion and ordinarily do not undertake the distribution of their products by route cars to small towns at a distance from their packing plants.

Cold-storage warehouses:

These defendants allege that the cold-storage warehouses described in the bill of complaint are necessary adjuncts and facilities for the preparation, conservation, and distribution of the food products stored therein. One of the purposes in operating such storage warehouses is to conserve the surplus supplies of seasons of heavy production for use during seasons of light production, thereby furnishing a more uniform market for producers and supplying such products at lower prices to consumers during times of natural scarcity.

Said defendant, Swift & Co., alleges that it has provided only sufficient cold-storage warehouses and space for its own business and that of its subsidiaries. These defendants deny that such cold-storage warehouses or space has been operated or is operated in collusion, combination, or agreement with others of said parent companies or their subsidiaries, and these defendants deny that they have employed or that they do employ or that they can employ such cold-storage facilities in aid of the control of the price of meats or substitute foods.

The parent companies' acquisition of above-described facilities and their purposes in so doing

These defendants deny that the parent companies and their controlling heads, by a concert of action or pursuant to a common understanding, or otherwise, set about the acquisition of the various stockyards and the facilities appurtenant thereto, the terminal railways and market papers and trade journals, for the purpose (implied in the bill of complaint) of obtaining a primary profit, not only out of the sale of livestock purchased and slaughtered by them, but also on
29 that purchased and slaughtered by their competitors, or for the purpose (likewise implied in the bill of complaint) of repressing and discouraging development of so-called "independent packers and slaughter houses," or for the purpose of controlling the shipment of meat to the various markets.

These defendants are informed and believe, and therefore allege, that the following phrases, "independent packers and slaughter houses," "independents," "outside investors" or "outsiders," as used in the bill of complaint, mean and are intended to mean persons, firms, or corporations engaged in the meat-packing or other business

other than the defendants in the bill of complaint, and that such phrases imply and were intended to imply, without expressly charging, that the defendants in the bill of complaint are not acting independently of and in actual competition with each other.

These defendants allege that they, or some of them, have invested their capital in, have acquired the ownership of, and have operated stockyards for the purpose of securing an adequate and satisfactory supply of livestock for the operation of their packing plants adjacent to such stockyards.

These defendants deny that in any instance the ownership or control by other packers, or by anyone in fact other than the parent companies or one of them or their controlling heads of any stockyards in which these defendants or any of them are interested, has been discouraged or opposed.

These defendants deny that in pursuance of a common purpose, plan, and design, or otherwise, so-called "outside investors and independent packers" have gradually been forced out as dominant factors in the ownership and management of most of the important stockyards in which these defendants or any of them are interested, as charged in the bill of complaint.

These defendants further deny the inference in the bill of complaint that the means whereby these defendants or any of them secured an interest in any of the stockyards described in the bill of complaint were illegal, reprehensible, or contrary to good morals, but on the contrary these defendants allege that the acquisition of such interest or of capital stock in said several stockyards, whether by way of purchase or gift, was lawful and proper.

These defendants deny that said Swift & Company has availed itself of any control which may have been acquired by it in the stockyards companies mentioned in the bill of complaint, to grant exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities, and the location of cattle banks and cattle loan companies, to concerns and corporations in which the parent companies or some of them, or individuals who were stockholders in said parent companies, held the controlling stock.

These defendants deny that said Swift & Company, acting in concert or otherwise, with any or all other of the "parent companies" described in the bill of complaint, has employed any power or privileges, as alleged in the bill of complaint, with the intent, purpose, or effect of discouraging, suppressing the establishment of, or dwarfing the growth of, so-called "independent packing companies" as might then be in existence, as charged in the bill of complaint.

These defendants deny that they or any of them have employed any power or privilege described in the bill of complaint to enable said "parent companies," their subsidiaries, or the individuals who,

as alleged in the bill of complaint, own and control the "parent companies" and their subsidiaries, to obtain vast profits from the management of the stockyards or the grant of privileges appurtenant thereto.

On the contrary, these defendants allege that any profits realized by them, or any of them, out of the ownership or operation of said stockyards, or any of them, have amounted to only a reasonable return upon their investment in said stockyards and a reasonable compensation for the services rendered by and the facilities furnished at said stockyards.

These defendants deny that any profit received by said Swift & Company, or its subsidiaries, from any source whatsoever have been enjoyed or realized by said companies, or any of them, without the same appearing or being disclosed in the profits of the "parent company." On the contrary, these defendants allege that the profits of said Swift & Company from each and every source are truthfully reflected in its balance sheets and financial statements, and such profits are annually audited and such balance sheets and statements are certified to be correct by independent and responsible certified accountants and are widely published and circulated.

These defendants deny that said Swift & Company, in combination, collusion, agreement, understanding, or otherwise, with any other "parent company" described in the bill of complaint, or with their subsidiaries, has in any manner attempted to monopolize the meat industry of the country, or artifically, or otherwise, to control the ultimate price which the consumer pays for meat and meat products, as charged in the bill of complaint.

Contracts in restraint of trade:

These defendants deny that said Swift & Company, in combination, collusion, agreement, understanding, or otherwise, with any other "parent company" described in the bill of complaint, has entered into any unlawful contract or combination to restrain trade and commerce, or to artifically, or otherwise, prevent, between themselves, competition in the prices for which meat and meat products are sold.

These defendants deny that they or any of them have entered into any contract, combination, agreement, understanding, arrangement, or practice, whether known as "the percentage purchase arrangement," as charged in the bill of complaint, or otherwise, which had as its ultimate object the elimination of competition not only in the purchase of livestock, but also in the sale of dressed meats; and these defendants deny that the "parent companies" agreed upon and recognized between themselves certain percentages or proportions to which they deemed that each company was entitled; and these
31 defendants further deny that said Swift & Company so gauged its purchases that annually its purchases approximated actually or substantially the percentage so alleged to have been agreed upon. These defendants further deny that the purchases of live-

stock by Swift & Company or by its subsidiaries has been made in accordance with or pursuant to any agreement, understanding, or arrangement in regard thereto.

These defendants deny that divers percentages covering purchases by the "parent companies" of livestock at the various stockyards were agreed upon; and these defendants deny that Swift & Company or its subsidiaries has been a party to any understandings, agreements, or arrangements whereby certain of the "parent companies" should buy at certain yards or should refrain from buying at certain yards, as charged in the bill of complaint.

These defendants deny that any arrangements, agreements, or understandings were entered into with any so-called "outsiders" whereby purchases between the "parent companies" and such "outsiders" (also designated in the bill of complaint as "independents") were effected upon a percentage basis, as charged in the bill of complaint. On the contrary, these defendants allege that they are in actual and keen competition with all others engaged in the purchase of livestock and the slaughter and sale of meats, including the other "parent companies" and their respective subsidiaries described in the bill of complaint.

These defendants allege that Swift & Company is constantly striving to increase its purchases of livestock, and they allege that Swift & Company did increase its purchases of cattle nearly 3½ per cent in the four years ending with 1917.

These defendants allege that the "parent companies" and many other packing companies, which are not defendants in the bill of complaint, have long established packing business and have been engaged for a great many years in the purchase of livestock at the respective stockyards in which the purchase of livestock is carried on in open markets and in which each purchaser can see from day to day just what number and kind of livestock his competitors are purchasing, and all of said packing companies, large and small, are likewise severally striving to increase their respective purchases of livestock.

These defendants alleged that such constant effort on the part of all packing companies to increase their respective volume of business tends to bid up the price for livestock to a point where the packing company can no longer afford to buy, for the reason that and these defendants allege that, the packing company, whether large or small, can not afford to pay more for livestock than it can get from the consumer for the meat and the by-products of the livestock.

These defendants allege that such persistent, watchful and keen competition prevents said Swift & Co. from increasing its proportion of the total livestock purchases materially during any one year, but these defendants deny that such fact is evidence of or tends to prove any contract, agreement or understanding between the "parent companies" for any apportionment of livestock purchases
32 among them, but on the contrary these defendants allege that such fact results from an economic law which is applicable to

every established industry where competition exists, and is peculiarly true of the packing business for the reason that the well-known small profit of packing companies on the sales of their products (heretofore in this answer referred to) fixes a narrow range within which any packing company can afford to bid up the price of livestock in order to increase its proportion of the total purchases of livestock.

These defendants alleged that by far the largest proportion of livestock for meat purposes is produced in the Western States and particularly in the States lying west of Chicago and that by far the largest proportion of the fresh meat and by-products resulting from the slaughter of such livestock is consumed in the Eastern States and particularly in the New England and North Atlantic States; that as a result of the invention of the refrigerator car, it is more economical to slaughter livestock in the West near the sources of supply and ship the fresh meat and by-products to the numerous consuming centers in the East than to ship the livestock from the West to such consuming centers in the East for slaughter.

These defendants alleged that approximately 90 per cent of the meat derived from livestock slaughtered in the West is not sold or consumed at the place of slaughter, but is shipped long distances, the largest part thereof being shipped to cities and towns in the East at which such fresh meat must be sold promptly for the best price there obtainable for the reason that fresh meat is a highly perishable commodity and each succeeding day it is held it will bring a constantly lower price.

These defendants allege that no agreement or other arrangement concerning the purchase of livestock can have any effect upon prices which the fresh meat will sell for at the consuming centers, but that the price which can be obtained for the fresh meat is dependent upon the supply of meat and the demand for meat at the city or town where the meat is offered for sale.

These defendants allege that, even if the defendants should enter into an agreement or other arrangement affecting the aggregate number of livestock purchased, as charged in the bill of complaint, such agreement or arrangement could not change the then existing supply of fresh meat or affect the then demand for that supply of fresh meat at the local market in the East; and that if the local market in the East be glutted with fresh meat, prices will fall without reference to the quantity of livestock at that time being purchased in the West or the price paid therefor; and likewise if the local market in the East has less fresh meat upon it than there is demand for, prices for that limited supply of fresh meat in that market will rise without reference to purchases and prices of livestock in the West; and that no agreement or other arrangement can affect prices of fresh meats at the local selling points that does not operate upon the supply of meat or the demand for meat at that particular point.

These defendants deny that they or any of them are directly or indirectly a party to any such agreement, combination, or
33 arrangement to directly or indirectly affect the supply or demand for meats; but they allege that the prices at which they buy livestock and sell fresh meats and all other commodities sold by them are determined solely by the economic law of supply and demand.

These defendants deny that means were adopted by them or any of them, whereby and by virtue of the "parent companies" alleged control over many stockyards, as charged in the bill of complaint, sales to so-called "outsiders" or "independents" were controlled by the "parent companies"; and these defendants deny that such control as the "parent companies" have exercised over stockyards, stockyards' loan institutions, terminal railways and other privileges and perquisites to the operation of such stockyards has discouraged opposition or competition by commission men or such so-called "independent packers," as charged in the bill of complaint.

Control of substitute foods

These defendants deny that they or any of them have eliminated competition in meat products, as charged in the bill of complaint. These defendants further deny that they or any of them set about to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint. On the contrary, these defendants allege that Swift & Company and its subsidiary companies entered upon the business of handling fish, vegetables, either fresh or canned, fruits, milk, poultry, butter, eggs, and cheese for the purpose of utilizing their distributive sales agencies economically, as they had a lawful right to do.

These defendants allege that the handling of such products through its branch houses enabled Swift & Company and its subsidiary companies to dispose of a larger volume of products without a proportionate increase in expense and has been in the interest and for the benefit of the consuming public in that it has enabled the consuming public to receive said perishable products in a better condition for consumption than would have otherwise been the case. These defendants allege that the handling of said products has made it possible for Swift & Company and its subsidiary companies to establish branch houses and car routes at points which would not support a branch house or a car route handling only meat products, thus reaching a territory and serving a consuming public theretofore without a satisfactory means of supplying its wants in said perishable products and, likewise, furnishing a broader outlet for the farmers' products by reaching a broader consuming public.

These denfendants allege that there is, and can be, nothing illegal or reprehensible in the defendants reaching "remote spots" as insinuated in the bill of complaint. On the contrary, these defendants allege that such reaching of "remote spots" is lawful and in the public interest. These defendants allege that they had and have a legal right to handle said products and are economically justified in so doing.

34 These defendants deny that Swift & Company or its subsidiaries ever employed their distributive facilities or otherwise to fix prices so low as to eliminate competition.

These defendants deny that they or any of them have attempted to monopolize commerce in any of the food products above mentioned and they deny that any act or acts of these defendants have resulted in the defendants obtaining complete control of any food products, as charged in the bill of complaint. On the contrary, these defendants allege that Swift & Company and its subsidiaries handle an amount of so-called "substitute foods" which is negligible in comparison with the Nation's supplies of such "foods."

These defendants deny that unless prevented by a decree of this court the defendants will, "within the compass of a few years, control the quantity and price of each article of food found on the American table," as charged in the bill of complaint.

Extent to which the monopolistic attempts have been successful

Financial growth, present net worth, and volume of business:

These defendants allege that they have no knowledge in regard to the financial figures of "parent companies" other than Swift & Company, and therefore these defendants neither admit nor deny the averments contained in the bill of complaint in regard to the aggregate financial growth of the "parent companies" or in regard to the payment of cash dividends by said companies. These defendants deny that it is illegal, reprehensible, or contrary to good business morals, as impliedly charged in the bill of complaint, to reinvest earnings of the defendant corporations in their business. These defendants allege that the profits made by Swift & Company and its subsidiary companies have been reasonable and have been the lowest possible consistent with a reasonable return upon the investment in the business, and have been so low as to practically not affect the prices at which its products are, or have been, sold to the consuming public.

These defendants deny that vast profits, whether difficult of ascertainment or otherwise, have been realized by the individual defendants by virtue of either their alleged personal control of other packing houses and slaughtering companies than the "parent companies" and their subsidiaries, or their interest in stockyards, terminal railways, rendering companies, cattle-loan institutions, and other corporations, as charged in the bill of complaint. And these defend-

ants deny that such corporations had their inceptions in, or depend for their prosperity upon advantages or privileges growing out of, interlocking control of stockyards and stockyard companies.

Number of controlled companies:

These defendants have no knowledge of the number of corporations, trade names, or concerns in which other "parent companies" than Swift & Company or their respective subsidiaries have
35 an interest, and therefore they neither admit nor deny the averments contained in the bill of complaint in regard to the number of corporations and concerns, including trade names, which the "parent companies" or the individual defendants and their families maintain and control, as set forth in the bill of complaint; but these defendants deny that they have acquired or organized any concerns or corporations in furtherance of any scheme or plan of action, general or otherwise, for the purpose of restraining or monopolizing trade or commerce, as alleged in the bill of complaint.

Extent of industrial control in the substitute foods and unrelated commodities:

These defendants deny that, if the growth of the parent companies and their subsidiaries is permitted to continue unchecked, they will within a few years completely control the various industries in which the defendants are engaged.

These defendants have no knowledge of the averments contained in the bill of complaint as to the value of business transacted by Armour & Company in 1916, and therefore these defendants neither admit nor deny said averments.

These defendants deny that they, or any of them, have any purpose or intention to secure control of the market for "meat substitute foods," as charged in the bill of complaint.

These defendants deny that it is illegal, reprehensible, or against good business morals for the "parent companies" in a large number of instances to contract for the exclusive output of many other companies engaged in the production of so-called "substitute foods" and so-called "unrelated commodities"; or to market the outputs of such companies through the distributive facilities of the "parent companies" or their subsidiaries; or in this fashion for the "parent companies" to control the output of such concerns and the market price of their products as completely as though they themselves owned the producing companies; but these defendants deny that any of them is or has been a party to any combination, agreement, understanding, contract, or conspiracy to restrain trade or monopolize commerce in meat products or substitutes or other foods consumed in the United States.

Individual defendants

These individual defendants admit that they or some of them are officers, directors, agents, employees, or stockholders of Swift & Com-

pany, described in the bill of complaint as a parent company, or of the so-called "Swift defendants," described in the bill of complaint as corporations, or some of them, or the so-called "other defendants," described as corporations in the bill of complaint; but they deny that they are officers, directors, agents, employees, or stockholders of any of the other so-called "parent companies" or their subsidiaries.

Said individual defendants admit that some of them are, in their individual capacity, financially interested in stockyards, ter-
36 minal railways, cattle loan banks, rendering companies, and other institutions located at or adjacent to stockyards.

Said individual defendants allege that the corporations dealing in so-called "substitute foods" and so-called "unrelated commodities," referred to in the bill of complaint, are controlled by their respective stockholders acting by and through their duly elected directors and officers.

Said individual defendants admit that in many instances stock certificates representing capital stock of corporations which are owned by said Swift and Company stand in their respective names as a matter of convenience to such "parent company," but that such stock certificates are owned and held by said "parent company"; and these individual defendants deny that there is anything illegal or reprehensible or contrary to good business morals in their said activities.

Said individual defendants deny that they have or exercise any control over the facilities or instrumentalities of the meat business other than as aforesaid, and they deny that by reason of their interests in such corporations dealing in so-called "substitute foods" and so-called "unrelated commodities" the parent companies are enabled to carry out the alleged purpose of the combination charged in said bill of complaint.

These individual defendants deny that their interests in such corporations hereinbefore described are now or will continue to be a sinister or every present means of furthering any attempt to monopolize or to perfect a monopoly, so that the "parent companies" or their subsidiaries will have or will ever have complete control either of meat products or of all so-called "substitute foods" consumed in the United States, as charged in the bill of complaint.

Subsidiaries defendant

These individual defendants deny that New England Dressed Meat & Wool Company, a corporation organized and existing under the laws of the State of Maine; North Packing & Provision Company, a corporation organized and existing under the laws of the State of Maine; the Sperry & Barnes Company, a corporation organized and existing under the laws of the State of Connecticut; John P. Squire & Company, a corporation organized and existing

under the laws of the State of Maine; John P. Squire & Company (Inc.), a corporation organized and existing under the laws of the State of Massachusetts; John P. Squire & Company (Inc.), a corporation organized and existing under the laws of the State of Rhode Island; Springfield Provision Company, a corporation organized and existing under the laws of the State of New Hampshire; White, Pevey & Dexter Company, a corporation organized and existing under the laws of the State of Maine, are subsidiaries of any "parent company" described in the bill of complaint, or that any so-called "parent company" has any ownership, interest or title in and to any of the capital stock or property of any of the said companies.

37 These individual defendants further deny that Western Meat Company, a corporation organized and existing under the laws of the State of California; Oakland Meat & Packing Company, a corporation organized and existing under the laws of the State of California; Nevada Packing Company, a corporation organized and existing under the laws of the State of Nevada, are subsidiaries of any of the so-called "parent companies," or any of them, as charged in the bill of complaint, or that any of said "parent companies" has any ownership, interest, or title, directly or indirectly, in or to any of the capital stock or property of any of said companies.

Conclusion

These defendants deny that they or any of them is or has been a party to any combination, agreement, understanding, contract, or conspiracy to restrain trade, or to monopolize commerce in meat products or "substitute foods" consumed in the United States.

These defendants allege that the allegations and charges in each of the paragraphs of the bill of complaint are not sufficiently definite and specific to constitute a violation of law, but are too general and vague.

These defendants allege that the bill of complaint does not allege acts or facts to constitute a violation of law, but that the charges contained in the bill of complaint and in each paragraph thereof are mere statements of legal conclusions.

These defendants deny that complainant is entitled to the relief, or any part thereof, as prayed for in its bill of complaint, and allege that complainant under the allegations of its complaint is without standing or right in this court or in any court of equity.

These defendants deny all and all manner of unlawful acts whatsoever whereof they are in anywise by the said bill of complaint charged; all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct.

These defendants pray in all things the same benefit and advantage of this, their answer, as if they had pleaded or demurred to said bill of complaint.

Wherefore these defendants pray that the bill of complaint herein be dismissed with costs:

Swift & Company (Illinois); Swift & Company (West Virginia); Swift & Company, Inc. (Kentucky); Swift & Company, Ltd. (Louisiana); Swift & Company (Maine); Swift Beef Company; United Dressed Beef Co. of New York; J. J. Harrington & Company, Inc.; Bimbler Company; the G. H. Hammond Company; Omaha Packing Company; Plankington Packing Company; Sturtevant & Haley Beef & Supply Company; E. K. Pond Packing Company; Van Wagenen & Schickhaus Company; Hammond Beef Company; Omaha Meat Company; A. Canfield Commission Company; H. C. Derby Company; Metropolitan Hotel Supply Company; Vermont Supply Company; the Hotchkiss Beef Co.; Western Packing Company; Louis F. Swift; Edward F. Swift; Charles
38 H. Swift; Gustavus F. Swift, jr.; Harold H. Swift; Alden B. Swift; George H. Swift; Laurence A. Carton; Frank S. Hayward; Charles A. Peacock; Wilfred W. Sherman; Wellington Leavitt; John M. Chaplin; William B. Traynor.

By HENRY VEEDER,
Their Solicitor.

In Supreme Court of the District of Columbia

Answer of Armour defendants

Filed February 27, 1920

[Title omitted.]

The joint and several answer of Armour & Company, a corporation organized under the laws of the State of Illinois; Armour & Company, a corporation organized and existing under the laws of the State of New Jersey; Armour & Company, a corporation organized and existing under the laws of the State of Kentucky; Armour & Company, a corporation organized and existing under the laws of the State of Texas; Armour & Company (Ltd.), a corporation organized and existing under the laws of the State of Louisiana; the Anglo American Provision Company, a corporation organized and existing under the laws of the State of Illinois; the Colorado Packing & Provision Company, a corporation organized and existing under the laws of the State of Colorado; Fowler Packing Company, a corporation organized and existing under the laws of the State of Maine; Hammond Packing Company, a corporation organized and existing under the laws of the State of Illinois; the New York Butcher's Dressed Meat Company, a corporation organized and ex-

isting under the laws of the State of New York; Atlantic Hotel Supply Company (Inc.), a corporation organized and existing under the laws of the State of New York; and of J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurance H. Armour, Arthur Meeker, R. J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, and George B. Robbins, defendants to the petition or bill of complaint of the United States of America.

These defendants, for answer to the said petition or bill of complaint, or unto so much or such parts thereof as they are advised it is necessary or material for them to make answer unto, answering, say:

39 I

They respectively admit, for all the purposes of this suit or proceeding, the organization and existence of the respective corporate defendants, and that they were organized respectively under the laws of the respective States as stated in said petition or bill of complaint.

II

They respectively, for like purposes, admit that Armour & Company of Illinois referred to in the said petition or bill of complaint as the parent company, is, either directly or through subsidiaries, engaged in (a) the purchase and slaughter of livestock; (b) the preparation and manufacture of dressed meats and edible by-products of the slaughter; (c) the curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal; (d) the production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used; (e) the manufacturing, canning, or otherwise preparing to a limited extent for the market and the sale and distribution of food supplies other than meats, such as are referred to in said petition or bill of complaint as substitutes for meat foods, but deny that it is either directly or indirectly engaged in the manufacturing or canning or packing of fish, vegetables, or cereals; (f) the manufacture and sale to a limited extent and primarily for the purposes of its own business of various other articles commonly purchased and used either by the producer of livestock, the companies transporting the livestock or dressed meats, or the competitors of this parent company, such as are in said petition or bill of complaint referred to as (but which these defendants respectively deny are) unrelated commodities, but these defendants deny that the allegations of said petition or bill of complaint in respect to the activities of said defendants show facts which constitute interstate or foreign commerce.

III

These defendants respectively deny that by the supposed unlawful means and methods set out or complained of in the said petition or

bill of complaint, or any or either of them, or by any other unlawful means or methods, or otherwise, this parent company and defendants referred to in the said petition or bill of complaint as its subsidiaries, or any or either of them—acting by or through their principal officers, who have been made defendants herein, or otherwise—have attempted to dominate, control, or monopolize a very great or any proportion or part of the food supply of the Nation (other or otherwise than as they respectively, lawfully, and properly carry on and so therein lawfully and properly dominate and control their own respective legitimate businesses, as they lawfully may); or that they, or either of them, have thereby or otherwise, or in any way, built up an unlawful monopoly or control
40 over divers and sundry or any products or commodities in said petition or bill of complaint referred to, or of any products or commodities whatever.

These defendants respectively deny that this so-called parent company and the subsidiaries, defendants, or any or either of them, by the same or similar methods, or otherwise, are attempting to increase or extend any supposed monopoly such as referred to in said petition or bill of complaint or otherwise; or that there is or has been any such, or any monopoly; or that they or any or either of them are enabled thereby, or otherwise, to, or do, artificially control the supply and the price, or either of them, of the food supplies of the Nation, or of any part thereof.

These defendants deny that they either with the other defendants to said petition or bill of complaint, or any or either of them, or otherwise, have created or obtained, or that these defendants, or any or either of them, have attempted to create or obtain, any monopolies or monopoly in or of the interstate trade or commerce, or of any part of the interstate trade or commerce, in or of livestock, meat products and substitute foods, or any or either of them, or in any other products or commodities, or that they have acquired or have, or have ever had, certain or any instrumentalities, facilities, or advantages by which they have been or are or might be enabled to more effectively or otherwise, or in any way, monopolize, or that they have in any way monopolized or attempted to monopolize any part of the trade in such, or any, products or commodities, or that they are or have been engaged in any contract or contracts, combination or combinations, or conspiracy or conspiracies in restraint of trade or commerce among the several States, either with each other or with any other person or persons.

They deny that they have acquired or have any instrumentalities, facilities, or advantages other than such as are lawful, fair, and proper, and as have legitimately resulted and come, and do legitimately result and come from their industry, application, skill, experience, and efficiency in the proper organization and conduct of their business and trade and such as have been and are open to any others to possess or acquire and exhibit and apply.

IV

These defendants admit that this parent company, Armour & Company, is the successor or natural outgrowth of concerns of many years' standing and that its principal business is the purchase and slaughter of livestock, consisting of cattle, hogs, sheep, and calves, the dressing of the carcasses and the preparation and distribution and sale as and to the extent of the dressed meat and food products, and the distribution of the dressed meats in interstate commerce (as well as in intrastate commerce) through various means, by which the dressed meat reaches the retail butchers and is by the retail butchers sold to the consumers, and also including in their said business the saving and utilization for its most valuable uses of every part and portion of the slaughtered animal, and their
41 preparation for market and their use in the manufacture or production of useful commodities in whole or in part therefrom, and the sale and distribution thereof.

V

The invention and the use by these defendants of refrigerator cars, by means of which the dressed meats might be and are transported long distances and preserved free from decay during transit, have enabled them to widely extend their market for fresh meats, and to slaughter the livestock near the source of supply in the meat-producing sections of the West and to sell the products thereof in the more densely populated and meat-consuming centers of the East, and thereby supply a greatly increased demand therefor and consumption thereof; and they say that this has resulted in a large economic saving to both producer and consumer and in a greater demand and a ready cash market for livestock to supply such demand for such meats, and an increase of livestock production as a dependable source of supply of meat and products of meat animals.

The "route" refrigerator cars have been employed to carry such meat supply to the smaller towns and places which require smaller and less than carload quantities; and for the same purpose auto trucks have been introduced, when more prompt and efficient than railroad cars; to supply smaller towns and places or where the places are not reached by railroad service.

That the ownership and use of refrigerator cars by the defendants and of an efficient organization to handle them were and are necessary for the legitimate purposes of defendants' business aforesaid, and the carrying on thereof and of preserving in transit the fresh meats and commodities requiring refrigeration in order to prevent their quick decay and to enable their transportation in good, wholesome condition to the markets where they were to be disposed of and consumed; that such provision and ownership and handling and operation of such refrigerator cars by the defendants and other packers has been going on for many years and has been approved,

authorized, and regulated by the Interstate Commerce Commission and its lawfulness, necessity, and economic utility full established and recognized.

These defendants deny that through the ownership and use of said refrigerator cars or the operation of said route cars or otherwise they have or enjoy any unlawful rates, concessions, privileges, or advantages from the railroads or the carriers and say that they ship their products under tariffs and rates, rules, and regulations prescribed in valid, published tariffs on file with the Interstate Commerce Commission and pay the same rates and operate under the same rules and regulations as are lawfully prescribed for and paid and observed by, or available to, all others shipping the same or like commodities.

VI

These defendants admit that such stockyards as are described in said petition or bill of complaint which are public stockyard
42 markets are employed for the yardage and care of cattle, sheep, and hogs at places where such livestock are customarily offered for sale and sold and have been shipped for sale, and that customarily all who wish either to buy or sell such livestock have been and are given free access to and the privilege to trade in and buy and sell livestock in such yard. When and as the amount of business at such a stockyard has become or been large enough to call therefor, men who are or become skilled therein have engaged and do engage in the purchase and sale of livestock at such yards as commission men for those who desire to purchase or have livestock for sale. The principal business of such commission men in the sale of livestock for producers or shippers who desire their services and do not wish themselves to trade in person at the yard. Such commission men customarily are the consignees, as well as the agents of the shippers of livestock whom they serve, and have no connection or affiliation whatever with the defendants, and have or need to have no financial or other relationship with owners of the stockyards, other than as tenants of offices and in dealing with the stockyard companies with respect to the yardage and care of livestock consigned to them and the allotment to such commission men of pens in the yards in which the livestock consigned to them is yarded and sold.

The sales and purchases of livestock at such yards customarily take place in, at, or near the respective pens in which the livestock dealt in are confined and in which they are shown to and examined by the proposed buyer.

The livestock are sold by weight per 100 pounds, and upon the sale are weighed by the stockyard company from seller (owner or commission men) to buyer; and the stockyard company makes and keeps a record of the sales and weights as well as of the receipt and yardage, feeding, and care of the livestock.

Statistics and data as to the market prices for each day, including numbers and kinds and grades of livestock received or to arrive on that day at that stockyard and at other yards, and prospective receipts are publicly posted by the stockyard company at the Exchange Building and usually at other well-known places in the yard.

While the stockyard company has and exercises such control of the yards and of its own provision and furnishing of the facilities which it provides as the performance of its function in those respects calls for and makes necessary, it makes no unjust or unfair discrimination, of which these defendants are aware, as between different companies or persons who make use of such facilities, either as to providing sites or locations for packing houses or among those desiring them, or as to granting switch tracks or sidings or other accommodations, which are subject to the control of the public utilities commission or similar body in the State, or of the Interstate Commerce Commission, or as to location of banks or loan companies or offices of commission men, or the allotment to commission men of pens, except that (as defendants are informed) there is or may be observed a long-standing custom of permitting commission
43 men to retain their livestock pens from year to year as they do their offices.

These defendants say that if there is or has been any unjust, unfair, or intentional discrimination on the part of any stockyard company, or of any terminal or other railroad at any such yard or yards, toward or for or against any packers or buyers or sellers or commission men, in any or either of the matters or respects aforesaid, or in or by practicing delay in allotting animals brought or in switching loaded cars to connecting lines, or in any other respect whatever, these defendants, as to any such case have not, nor has any or either of them, been knowing or privy thereto or in any way whatever responsible therefor.

The statements in the said petition or bill of complaint of the character of services performed by the commission men and with respect to the services performed by the stockyards companies are believed to be accurate.

These defendants believe it to be true that the charge of the stockyard companies for yardage, feed, and other services and materials furnished by them are prescribed by the respective stockyards companies rendering such services. So far as these defendants, respectively, have any information or are aware of the services, facilities, and conveniences rendered by the respective stockyards or of the charges made by them therefor, they are rendered and made fairly and without any discrimination as between different shippers, commission men, companies, and persons to or for whom they are rendered or made. With respect to each and every such matter or things, these defendants have not and have never had or exercised any control, interference, or say whatever to or toward the giving or showing any partiality or discrimination to or against one customer thereof against or to another.

These defendants deny that with respect to the allotment to or the seeking by any company or person, other than themselves, of packing sites or sites for packing houses, or respect to the number of plants or packing houses that should be established at the respective stockyards or any or either of them, or with respect to the allotment to or securing by any banks or loan companies of locations or sites for their banks or offices, or of any or either of them in or near stockyards, or with respect to the designation of how many and which banks or loan companies might establish themselves at or near such yards or any or either of them, these defendants have not, nor has any or either of them, interfered or sought to interfere, or to direct or control the same.

Defendants deny that they have or either of them has jointly or severally used or exercised any power, control, or interest they may have in any stockyard companies to hinder, impede, or prevent the establishment, enlargement, or development of packing plants at any such yards, nor has there been any such hindering, impeding, or preventing, so far as they have any knowledge, information, or belief. The action of any such stockyard company or companies has been to encourage the establishment of such packing plants and businesses as would tend to develop and increase the legitimate
44 business and business interests of such stockyard companies. That this same statement applies to the action of the stockyard companies with respect to sites for banks and loan companies.

While such banks and loan companies as are, or may be, located at or near the stockyards do a considerable business, according to the information and belief of these defendants, respectively, the great bulk of such cattle paper is not held by such banks or loan companies, the principal business of which is not to lend money but to discount and guarantee the note of the livestock producer or dealer and thereby lend and pledge their credit to enable such livestock producers or dealer to secure money from the eastern banker necessary for the purpose of his business, and any statement or inference in the said petition or bill of complaint that stockyard companies through control of bank or loan company sites can or do wield or have an influence or effect over stockmen or raisers of or dealers in livestock, in any way or sort whatever to the detriment or prejudice of such stockmen, raisers, or dealers is untrue. Any statement or inference in the said petition or bill of complaint that these defendants, or any or either of them, have wielded or exercised, or do wield or exercise any such influence, or that they, or any or either of them, have attempted or do attempt to wield or exercise or have any such influence is untrue and baseless.

VII

As to terminal railways: Defendants say that in order to facilitate the connection at stockyards with main or trunk line railroads for the purpose of switching cars from such railroads to stockyards, from yards to packing plants, from packing plants to main or trunk

line railroads, it is necessary and proper that terminal railways should be constructed for such purpose, and that stockyard companies have established such roads and have acquired an interest in and use such roads to promote the development and use of stockyards at a satisfactory and attractive market center for livestock producers and shippers, offering and affording such producers and shippers adequate transportation service at such stockyards, and offering and affording all industries there located like service. These defendants deny that they, or any or either of them, have sought or acquired or exercised, through their interest in stockyard companies or otherwise, any interest or control in such terminal railways for the purpose of discriminating against other packers or independent buyers or engaging in, bringing about, or doing any improper or unlawful practices, or been responsible for any unlawful acts or conduct whatever in connection therewith.

VIII

As to market papers and journals: Defendants say that producers of livestock require and should be furnished full, accurate, and unbiased reports of the demand for livestock, the prices prevailing at various markets, and such other information as to market or trade conditions as they may desire. These defendants deny that they,
45 or any or either of them, now own any interest whatever in such market papers or journals, or that they have ever owned an interest in such papers or journals published at the larger and well-established markets, such as those at Chicago, Kansas City, or Omaha, and defendants say that such financial interest as they may have had in the past in market papers and journals at any of the smaller yards was acquired for the purpose of rendering aid to and was prompted by the desire to develop these places as market centers attractive to producers of livestock through proper publicity, and advertisement, and dissemination of accurate information, regarding market conditions, both local and general, and that such papers and journals are a necessary and proper adjunct to the building up and establishment of a livestock market; that the statistical information therein published and disseminated is collected and secured from the records of the various stockyards open and available to the public generally and others locally, and published in all daily papers where the yards are located.

IX

As to rendering plants: It is true that while in transit and after reaching the yards livestock often die, either from disease or accident, and the stockyard companies, as a matter of proper regulation, arrange for the disposition of the same; and that there has customarily been only one such rendering plant at each of the important yards. Such regulation, which was the result of many years of

experience, is primarily in the nature of a sanitary precaution, and it is essential that disposition of such dead animal bodies be prompt and efficacious, and the experience of many years has demonstrated that such prompt and efficient service can best be secured by the method followed at most of the stockyards of disposing of such animals to some one rendering company. These defendants say, however, that they have not, nor have any or either of them been, nor are they or any or either of them responsible for any improper practices therein or in connection therewith.

X

Referring to the specification in the said petition or bill of complaint as to the consequences or results flowing from the control by the stockyard companies of the facilities pertaining to the stockyards, these defendants say (a) that of course a profit is properly derived from the livestock industry by and from the services and charges rendered by the stockyard company to such industry, and these defendants assert such profit will be so properly derived therefrom whether these defendants or any of them own or control any interest in said stockyards or not; (b) that if there be a potential means of favoritism on the part of stockyards in dealing with commission men or influence over them or in the alleged power of the stockyard companies to grant monopolies, carrying with it profit to banks, cattle loan institutions, rendering plants, or sources
46 supplying food for livestock and others; or (c) if there be a potential means to prevent the establishment of new packing plants or to hamper the growth of those in existence; or (d) to prevent the development or limit the number of new markets, or to centralize or restrict business to stockyards so controlled; or (e) if there be any such means of favoritism from having peculiar or exclusive access to information concerning the receipts and sale of livestock, its disposition and the dissemination of information to the producers or others, and these defendants assert that the receipts and sales of livestock are public records of the various stockyards companies, open and available to the public generally, and that such information is posted on bulletin boards at such yards and published in the daily papers where the yards are located; these defendants deny that their interest in or control of any stockyards has been used as a means of any such favoritism or discrimination or any or either of the evils or improper practices so charged to be possible in the conduct or control of the existing stockyards, or any or either of them.

They respectively deny that they, or any or either of them, have at any time or in any way participated in or favored, or been privy to any such conduct in the control or operation of the stockyards or the facilities appertaining thereto, in any case

XI

As to branch houses, route cars, auto trucks, and cold-storage warehouses: Defendants are without information upon which to base a belief as to the total number of branch houses maintained by interstate slaughterers other than this defendant parent company.

The defendant parent company, Armour & Company, has approximately 400 of these branch houses located at or near the centers of consumption. These are necessary in order to enable it to properly handle a perishable product in such manner as to maintain adequate supplies at all times.

These defendants deny that said branch houses are cold-storage stations, but, on the contrary, assert that they are marketing and manufacturing facilities and are maintained for the express purpose of facilitating the distribution of its perishable products in such prompt and expeditious manner as will insure the same reaching the retail trade and ultimately the consumer in the best possible condition; that approximately one-half of these branch houses are equipped with refrigerating machinery, and that many of them located in the large centers are equipped with facilities for turning raw materials into the finished products—that is, smoking meats, boiling hams, and manufacturing sausage; that this is necessary in order not only to meet trade requirements but to place these defendants upon an equal competitive basis with local packers operating killing establishments; that they are maintained by these defendants for the purpose of marketing and distributing of their products and to afford to the local retail butchers the opportunity to make purchases of meat and meat products while in fresh, wholesome condition;
47 and that such branch houses are equipped with only sufficient cooler space for the needs of their marketing facilities in the particular locality where they are located, the turnover of such branch houses in said products being usually every week or every two weeks at the most.

These defendants say, and they submit that it is obvious and not open to question that such branch houses for the proper receipt, care, sale, and distribution of their products and merchandise are lawful and proper business facilities therefor and for supplying the wants of their customers and consumers. Defendants further say that direct and active competition exists between all of the various branch houses of this defendant corporation and those operated by each and all of the other defendant corporations named in this bill of complaint and between those operated by others engaged in the meat-packing industry, and various commission merchants and others who have the necessary facilities for handling like products; that such branch houses are recognized by the various communities they serve as of great and permanent value to the members of such community as well as of those resident in the immediate vicinity as affording to the people of such communities and surrounding territory an opportunity to secure under competitive conditions meats, meat prod-

ucts, and other commodities while in a fresh and wholesome condition.

Route cars are refrigerator cars which travel certain routes at stated intervals, supplement the branch houses and furnish prompt, efficient, and adequate service to such towns and places as are not of sufficient size in themselves to warrant maintenance of a branch house. These cars carry only such products as have been previously ordered and are needed to supply such orders. These defendants are without information upon which to base a belief as to the number of such route cars sent out by other defendants, or the number of dealers reached, or the number of cars owned by such other defendant parent companies.

Motor trucks make possible the rendering of such service to many towns and places which are not reached or served by route cars, or by branch houses. These defendants deny that these defendants reach or serve with such auto trucks a total of 20,836 towns throughout the United States and say that the number of towns so reached is about 1,500.

As to cold-storage warehouses: These defendants say that cold-storage warehouses were first used in connection with the packing business for the chilling of meats and later were adapted to branch-house use so that meats and meat-food products might be kept in prime condition for sale to the retailer; that from the beginning such warehouses have been, and now are, necessary instrumentalities in connection with the business of these corporation defendants in order that such business may be properly and efficiently handled and the volume of their slaughter of live stock and sale of dressed meat and meat-food products, for both domestic and foreign trade, extended to meet the constantly increasing demand therefor; these defendants further say that they have established or acquired an interest
48 in cold-storage warehouses in large eastern seaboard cities and elsewhere where cold-storage facilities or space was required for the storage of commodities wherein said defendants were interested and that these defendants have leased and do lease space therein to the public where, owing to seasonal conditions or fluctuations in foreign or domestic demand, it has not been possible completely to utilize such cold-storage facilities and space for defendants' then existing needs; these defendants deny that their establishment, use, or control of cold-storage warehouses was for the purpose, or has been employed or used to aid, or has aided, in any alleged control of the price of meats and substitute foods or any other commodity or commodities.

XII

As to the acquisition by this defendant parent company of interest in or control of stockyards, or the facilities appertaining thereto, and their purpose therein:

As to stockyards: These defendants jointly and severally deny that through a concert of action or pursuant to a common under-

standing with, or by acquiescence of any one or more of the parent companies named in said petition or bill of complaint, or otherwise, they or any or either of them set about the acquisition of the various stockyards and appurtenances and privileges incidental thereto for the purpose (as is implied in said petition or bill of complaint) of securing any such advantage or advantages as are alleged in said petition.

These defendants jointly and severally deny that there is or ever was any common purpose, plan, or design to which they, or any or either of them, were a party, to force the withdrawal of outside or any investors, or so-called independent packers, or any or either of them, as dominating or other factors in the ownership or management of most or any of the important or any stockyards; or that by or through any such purpose, plan, or design outside investors or so-called independent packers have been gradually or otherwise so forced out or been replaced by the defendant parent company, Armour & Co., or its representatives.

These defendants deny that they or any or either of them have availed themselves of any interest they may have in any stockyards or exercised any control they may have over such stockyards for the purpose of electing officers or directors or otherwise dominating or controlling the policies thereof for the purpose of granting exclusive privileges, such as the right to purchase dead animals or the right to furnish supplies and facilities and fix the location or give favorable sites for cattle banks or cattle loan companies to concerns or corporations in which they or some of them or individuals, who are stockholders in this defendant parent company, hold the controlling stock or that they have, acting in concert or otherwise, employed any of the powers and privileges alleged in and more specifically set forth and discussed in said petition or bill of complaint under the title "nature of the business and method by which it is conducted"

49 with the intent or purpose or effect of discouraging or suppressing the establishment of independent packing establishments or dwarfing the growth of such independent packing companies.

These defendants jointly and severally deny that this parent corporation, Armour & Company, or its subsidiaries, or the individuals who, as alleged in the bill of complaint, own and control this parent company and its subsidiaries were enabled by any of the alleged methods or means set forth in said petition or bill of complaint to obtain vast profits from the management of stockyards or granting of privileges appurtenant thereto; these defendants further deny that this parent company, Armour & Company, or its subsidiaries have thus been enabled, as is alleged, to enjoy and realize or otherwise have obtained or enjoyed or realized such, or any, profits without the same appearing or being disclosed in the profits of this said defendant parent company; these defendants further deny that they, or any or either of them, have attempted thereby or otherwise to monopolize the meat industry of the country or artificially to con-

trol the ultimate price which the consumer pays for meat and meat products.

These defendants say that in the course of the growth and development of the livestock and producing and slaughtering and packing industries they have aided in the establishment of stockyards at points near or nearer the livestock production than theretofore existing stockyards, and have taken over, or assisted in taking over and developing, what were small and inadequate yards at other points where they had been inaugurated, and have established at such places extensive and adequate packing plants, with the result that growers of livestock about or tributary to these localities now have properly equipped and efficiently operated marketing places so situated in relation to their farms and ranches as to afford them a ready market for the disposition of their livestock at a saving of freight, labor, cost, shrinkage, and other expenses. That the defendants have not heretofore in any way hindered, impeded, or prevented the establishment or operation of such or any stockyards by others, or the establishment thereat of any packing plants of others than themselves. That with respect to some of such yards, others of the defendant parent companies have also joined or cooperated in the establishment and development of such yards and have established packing plants thereat.

That in the cases where these defendants, or any or either of them, have established or aided in the establishment of stockyards, the motive of the defendants therein has been the proper motive of building up, or developing, or aiding in the building up, or development, of the industry and trade in livestock and the products thereof, as well for the benefit and development of the livestock producing industry as of their own packing industry, and in certain cases principally for the establishment and development of the livestock producing industry, and to bring a market for the livestock near to the production thereof.

That so far and to such extent as any or either of these defendants have acquired and held or owned any capital stock or other financial or property interests in any or either of the livestock yards or stockyard companies, such acquisitions and investments were and are held and owned for proper and legitimate purposes and from proper motives and considerations, and not otherwise.

These defendants say that the great industry in which they have been and are engaged of producing fresh meats and other products of slaughtered cattle, hogs, and sheep, and which was built up by the predecessors in the ownership and conduct of the defendant parent companies, and has been continued by the present owners and managers thereof, is and always has been properly allied with and dependent for its proper development and success upon livestock raising and production, as well as upon the provision of adequate markets and facilities for the marketing of such livestock; and that in the interest of their own packing industry and the provision

of markets and market facilities, they have been guided and led into a proper interest in the development, maintenance, and carrying on of livestock markets, and some of these defendants have, as they properly and lawfully might, acquired financial interests in the capital stock of certain stockyard companies. But at no time have they or any or either of them used or attempted to use the same in any way whatever to the prejudice or detriment of livestock producing interests or other interests concerned in or affected by the operation, management, or conduct of any stockyards, or upon any other theory or conception than that their best interests in such stockyards, and their investment therein call for and require such conduct and management thereof as would best serve and promote the interests of the livestock producing industry and the extension and increase in the production of livestock, upon which the success of such stockyards depended and the provision by and through such yards of the most efficient facilities and service for the receipt and care and marketing of such livestock.

These defendants—maintaining that the acquisition and holding by them or any or either of them of shares of the capital stock of stockyard companies as and for the purposes aforesaid and for investments and for the dividends or profits therefrom, are lawful and proper and not against any public policy or ground for any just or fair animadversion or criticism—nevertheless say that they are entirely willing that such stockyards shall be controlled and the burden of their maintenance and operation assumed by others who will properly maintain and operate such yards in and for the best interest of the livestock industry as market centers for the producers of livestock, with convenient, suitable, and efficient locations and facilities thereat or near thereto for the packing industry and the manufacture of livestock products.

They maintain, however, that no other person or persons, company or companies, are so much concerned in the establishment and in the proper conduct of such yards where needed for or for the building up and increase of livestock production as are the defendants and others in the meat-packing and livestock industry, who also from their experience, as well as from their large interests in their own industry, are qualified for as well as so concerned in the proper conduct of stockyards.

51 XIII

As to contracts in restraint of trade: These defendants deny that they, or any or either of them, have entered into or have any unlawful contract or contracts, combination or combinations, or conspiracy or conspiracies to restrain trade or commerce, or to artificially prevent between the defendants to the said petition, or any or either of them, or between these defendants, or any or either of them, or any other or others, or otherwise, competition in the prices for which livestock or meat or meat products or any other commodities are purchased or sold.

These defendants deny that there is any percentage-purchase arrangement between this defendant parent company and the other parent companies, or any or either of them, such as is referred to in the said petition or bill of complaint or otherwise. They deny that there is any such arrangement between this defendant parent company and the other companies, or any or either of them, having as its ultimate or other object the elimination of competition between them in the purchase of livestock or in the sale of dressed meats. They deny that there is any contract or agreement or arrangement or understanding to which these defendants, or any or either of them, are parties or privies for any limitation upon the source of supply, or upon the volume of business, or for limiting the purchase of livestock, or to limit the volume of their dressed-meat products.

They deny that these defendants, or any or either of them, are under any agreement or understanding for or concerning or recognizing certain percentages or proportions as between themselves or any or either of them, and any other defendant or defendants, to which they deem that each or any company was entitled, or that they, these defendants, or any or either of them, have any agreement or understanding to or do so gauge their purchases that annually, or at any time, their respective purchases should approximate actually or substantially the percentage so agreed upon or any percentage; or that as a means of perfecting said alleged arrangement or otherwise, divers percentages, whether varying at different stockyards or otherwise, are agreed upon, or that understandings have been had that certain of the parent companies should buy in certain yards or should refrain from buying in certain yards, or that in order to prevent such plans from being disarranged by outsiders, or for any other reason, agreements have been made, or any agreement has been made with such or any outsider by which purchases between this parent company, or any or either of these defendants, and the so-called independents, or any or either of them, were placed or were, or were or are to be, upon a percentage basis, whether similar to the above or otherwise.

These defendants further say that as between this parent company and each and all the other parent companies named as defendants herein and all others engaged in the packing industry there is now and at all times in said bill of complaint referred to has been active and unrestrained competition, both in the purchase of livestock
52 and sale of dressed meats, meat products, and other commodities, and these defendants deny that any apparent or approximate uniformity of percentage of the receipts of livestock purchased annually by this parent company and its subsidiaries evidences or tends to prove any such contract or agreement between this parent company and all or any of the other parent companies as is alleged and referred to in said petition or bill of complaint. This parent company has the purpose and intention of securing in active competition with each and all of the other parent companies and other packers such quality of livestock at the various stock markets that experi-

ence over a period of many years has demonstrated it must of necessity have in order to increase its volume of business and to provide for the needs of its trade, and that it may not lose that established position and trade it has taken years to gain.

These defendants say that during the year 1910 an indictment was returned in the District Court of the Northern District of Illinois against certain individuals who were then officers of the defendant parent companies, Armour & Company, Swift & Company, and Morris & Company, charging present petition or complaint that, among other acts, such defendants (who were therein alleged to be the principal owners and real managers of said companies) were engaged in a combination in restraint of trade and commerce, which combination was one for eliminating competition between the same defendant parent companies Armour & Co., Swift & Co., and Morris & Co., in the purchase of cattle and the sale of fresh meat; that, in pursuance of such unlawful agreement, said defendants refrained from competing with each other in the purchase of cattle, and fixed the number of cattle to be purchased by or for each of said companies and agreed upon the amounts to be bid for cattle from day to day and fixed the prices at which fresh beef should be sold. The respective defendants named in said indictment entered a plea of not guilty and, upon trial of said cause, the evidence concerning all and every the acts, transactions, or conduct of business which had been done or carried on by such defendants or any or either of them, and which in the petition or bill of complaint herein are charged to constitute a contract, combination, or conspiracy in restraint of trade, or a monopoly of any part of said trade in or in respect of either the purchases of cattle or the sales of fresh beef—or acts, transactions, or conduct of business like in all respects to those done by these defendants and so charged in said petition or bill of complaint herein as constituting such alleged unlawful restraint of trade or a combination or conspiracy in restraint of trade or a monopoly thereof—was presented, adduced, and exhibited by the Government on said trial as constituting or showing the guilt of the respective defendants named in said indictment and the said cause was, upon the evidence and testimony submitted, and the case made by the Government in support of said indictment, submitted to the jury—the defendants not introducing or offering any evidence, whereupon the jury, having been duly charged, retired and considered, and afterwards returned a verdict of not guilty, and thereupon said verdict was duly recorded and judgment thereon entered.

53 And these defendants maintain and charge that the said verdict and the judgment of said district court at Chicago, acquitting said defendants, constitute positive and incontrovertible proof and evidence that the acts, transactions, and conduct of their said business by these defendants which are referred to and complained of in the said petition or bill of complaint herein, which are like or similar to the acts transactions, and conduct of such business

in the said indictment referred to, or any or either of them, do not constitute any unlawful restraint of trade or commerce, or any combination or conspiracy in restraint of trade or commerce, or any monopolizing of or attempt to monopolize any part of such trade or commerce, but are lawful and proper.

These defendants respectively deny that means have been adopted by them, or any or either of them, or to which they or any or either of them, are parties, by which sales to outsiders or so-called independents or others were or are controlled by the parent companies or any or either of them.

These defendants respectively deny that control over the stockyards or stockyard-loan institutions, or terminal railways, or other interests, or any or either of them, has discouraged opposition by either commission men or so-called independent packers or others, or has existed.

XIV

As to control of so-called substitute foods: Defendants admit that in dealing in and handling so-called "substitute foods" or "unrelated lines" these defendants availed themselves (as is alleged in said bill) of the route cars, auto trucks, branch houses, and storage warehouses owned or controlled by them, and that further (as is alleged in said bill) these facilities intended primarily for the sale of meat, were employed, with comparatively no little increase of overhead expense, in the distribution of so-called substitute foods and unrelated commodities, and the defendants were enabled thereby to reach remote spots.

Defendants allege that prior to the Great War the business of these defendants in canned vegetables, canned and dried fruits, canned fish, rice, beans, and other nonmeat foods was very limited and confined practically to local purchases by a few individual branch houses, usually as an accommodation to some of their customers, but when our country went into war and a survey of the meat food situation of the world made it evident that the United States was to be (as it was) called upon to furnish practically the entire supply of pork product and the major supply of beef for not only our country but our allies, and everyone was urged to eat as little meat as possible, these defendants looked around for some products to sell to keep their enormous branch-house organization intact and employed (so far as not employed or used in such export and war business), and their cost to sell within reason, and largely increased these defendants' business in these lines. The reason for it was apparent when, as they allege upon information and belief, 35 per cent of defendants' entire production of meat food in this country was used by the allied Governments.

54 Defendants expressly deny, however, that they have at any time entertained the intention or purpose of controlling the Nation's supplies of so-called substitute foods or unrelated products, or any other commodity or commodities, but that on the contrary,

their purpose and intention in entering into and continuing in such lines of business and employing their organization and equipment therein, was entirely lawful as a natural and legitimate extension of their business, and moreover, based upon the soundest of economic grounds, to wit, the complete utilization of facilities and distributive organization necessarily required in the handling of meats and meat-food products and employed in connection with the marketing of so-called "substitute foods" and "unrelated lines" without placing upon the consuming public any burden of additional expense for the maintenance thereof.

Defendants further aver that the volume of business transacted in such lines amounts to but a small percentage of the total volume handled by wholesale grocers and other dealers in such commodities, and defendants allege, upon information and belief, that during the year 1918 the wholesale grocers throughout the United States handled more than $3,500,000,000 worth of wholesale grocery business, and that the total amount of such business in these lines handled by all the defendants named in said petition or bill of complaint, if combined, would not amount to more than 3 per cent of the entire total for the country; and further, that the amount of business handled by the defendant parent corporation, Armour & Company, during the year 1918 in canned fish, vegetables, and sundries, canned and dried fruits, fruit preserves and grape juice amounted to 4.62 per cent of said defendant, Armour & Company's, total volume of business.

Defendants further allege that the increase shown in the volume of business handled in such lines was and is due to the fact that defendants were enabled to secure such business by reducing the costs necessary in connection with marketing such products through complete and efficient operation and use of their facilities and branch-house space, thereby rendering better and more efficient service both to the producers of said commodities and the consuming public.

These defendants deny that the effect of their entry into such lines of business has been that of gradually eliminating competition, but are informed and believe and so allege that during the period 1907-1918, 1,101 wholesale grocers entered the highly competitive business of selling food products, and further allege, upon information and belief, that during the year 1918 there were 3,887 wholesale grocers through the country, and that at present there are over 4,000 wholesale grocers in active competition with the defendants in such trade.

These defendants deny that they have eliminated or lessened, or sought to eliminate or lessen, competition in meat products.

These defendants deny that they have eliminated or lessened, or sought to eliminate or lessen, competition in so-called substitute foods, or that they have in any way sought to prevent the public from turning to or using substituted foods. They deny that they set
53 about controlling or have sought to control the Nation's supplies of fish, vegetables, either fresh or canned; fruits, cereals, milk, poultry, butter, eggs, and cheese, or any or either of them, or

other substitute foods, or that they or any or either of them had any such purpose.

These defendants deny that in their trade and business in so-called substitute foods they fixed or attempted to fix prices so low as to gradually or otherwise eliminate competition or that they fixed prices with any such purpose. They say that their prices were fixed with respect to the normal conditions and facts which govern or affect the market price of such commodities, such as supply and demand, costs and expenses, and fair profit. They maintain that their facilities for conducting such business, their organization, skill, industry, and business experience were all proper and lawful elements in securing trade; and that they had or exercised no unlawful discrimination or advantages in securing such business, and they maintain that any growth or increase in their business obtained in the manner aforesaid, in competition with others, was the result of fair competitive trade. They deny that the securing of trade in such manner is in any sense monopolistic or in violation of law or public policy; or that trade so secured, as their trade was secured, is or may be a monopoly within the meaning of the law or in fact.

XV

As to the alleged monopolistic attempts of defendants:

These defendants respectively deny that they or any or either of them have in any way or at any time attempted to acquire, gain, or get any monopoly of or to monopolize any part of the trade or commerce.

The alleged comparison in the said petition or bill of complaint of the net worth of the defendant parent companies, so far as the same relate to Armour & Company in 1904 and in 1919, is inaccurate and misleading as bearing upon this question.

In the first place, the values of the same properties of this defendant parent company employed in its business in 1904 and 1919 fairly bear no comparison, the normal and proper growth and increase in such values being very large. The value of materials and commodities in an inventory of 1904, or thereabouts, as compared with the value of the same or like commodities of the same amount in 1919 would be very small, or much smaller, and such comparison would be of no value upon the question here under consideration. Almost the entire net profits of the business of this parent company from year to year during the said period of 15 years have gone to increase the capital and have been invested and employed in the extension of its business and its facilities, a very small percentage of such profits having been drawn out, and the added and compounded earnings from such invested profits properly and greatly increased the net worth of said company.

The said company has been during said period a very large borrower of money upon its paper, its actual working capital at

56 any period of time during said 15 years being thereby very greatly increased, and its earnings include its profits upon such actual employed capital. During said period of 15 years said company further added to its working capital the sum of $50,000,000, or thereabouts, received from the issue and disposition of that amount of its 4½ per cent bonds and was thereby enabled thus to increase its employed and working capital. During said period and in 1918 the said company issued and disposed of its convertible debentures to the amount of $60,000,000 and was thereby enabled to and did add that amount to its employed capital, and that of such convertible debentures so issued approximately $50,000,000 par value at the date hereof have been converted into the shares of the preferred stock of this parent company and constitute part of its permanent capital. That during the 10 years from 1909 to 1918, inclusive, the sales of said company increased from year to year from and through the extension of its business and trade from $225,000,000 in 1909 to $861,000,000 in 1918; that such increase during the great war was exceptionally great, owing to conditions produced thereby. That the average net profit upon said sales during said period of 10 years was 2 48/100 per cent; that such rate of net profit was lower than or as low as in any other industry. That the net worth of this defendant company in 1904 was the sum of $45,000,000, or thereabouts, and that the net worth of said company at the end of 1918 was $176,000,000, or thereabouts; so that the net worth of said company at the end of said period of 15 years is less than four times its net worth at the beginning of said period; but in reckoning the value of the said company at the end of 1918 the increase in the values of commodities and property at the close of said period as compared with the values at its beginning amount to a large sum, and this should be taken into consideration in comparing the value of the company at the beginning with its value at the end of said period.

These defendants deny the accuracy of the statement in the said petition of the increase of the net worth of the said parent companies from 1904 to 1919, or the value or effect of the figures stated in said petition with respect thereto as showing or tending to show, and these defendants deny that they show or tend to show any attempts at monopoly on the part of the defendants.

The increase in the amount of the sales of this defendant parent company in the said 15 years, which has been large, has been due and owing to legitimate trade conditions and to the business skill and industry of the defendants and their officers and employees, and the increase and growth of its business thereby produced, and not to any other cause. These defendants deny that the growth, extension, and increase of the business so brought about and resulting is monopolistic or in violation of the Sherman or other antitrust acts, or their spirit, or their purpose. These defendants deny that their personal control of any packing houses or slaughtering companies, or their interest in stockyards, terminal railways, rendering companies,

cattle-loan institutions and banks or other corporations, or in
57 any or either of them, have or had their inception in or depend for their prosperity upon advantages or privileges growing out of the interlocking or any control of the stockyards or stockyard appurtenances.

These defendants have not information on which to state or base a belief as to the number of corporations or concerns or trade names maintained or controlled by the parent companies or the individual defendants (other than these defendants) or their families, or in which they have a significant or minority or other stock interest or an interest of unknown extent. But these defendants allege that any such facts or statement thereof are and is immaterial to this cause. They respectively deny that there is anything unlawful or against public policy or subject to challenge herein, in or from the fact, if and so far as it is a fact, of the maintenance or control by the parent companies (within their respective charter powers), or the individual defendants or their families, of business corporations or concerns or trade names, or in their holding minority or other stock interests or other interests in any such corporations or concerns, or in their having acquired or organized or maintained them so long as they were useful for their purposes, and when no longer useful dissolving such corporations or concerns. These defendants respectively submit that the allegations of the said petition in that behalf are immaterial. These defendants deny that they, or any or either of them, have acquired or organized, or become or are interested in any concerns in furtherance of any supposed general scheme or plan of action which is unlawful or against public policy or improper.

XVI

As to the extent of industrial control of defendants in so-called substitute foods and unrelated commodities:

Defendants deny that the growth of the control of these defendants, or any or either of them, in all or any of the various industries in said petition referred to, if permitted to continue unchecked, will be complete.

With respect to the business in 1916 of this defendant parent company in canned fish, vegetables and sundries, canned and dried fruits, fruit preserves (soda-fountain supplies), and grape juice, and the amount thereof in 1916, and in 1918, and the increase in the volume thereof in said two years, these defendants say that this increase in business was lawful and proper, and is to be attributed to the skill and energy and business ability, and proper business organization and facilities with which said business was conducted; and that such increase in business was lawfully accomplished and without violating any law or public policy. These defendants are unable to state whether any or how much of such increase of business was acquired

"at the expense of competitors"; but they say that in all competitive business, the business properly secured by each of the competitors is, within the sense and meaning of such allegation in said petition, acquired at the expense of other competitors; and that such is the proper and lawful operation of competition, which is authori-
58 tatively defined to be the seeking by two or more of trade which only one may secure.

These defendants deny any purpose on their part to secure control of the markets for meat substitute foods, and that their engaging in such trade in competition with hundreds of others who are also engaged in such trade, and the purpose of the defendants to secure by proper competitive methods a portion of such trade as might come to them is lawful and proper. There is no allegation or charge in said petition or bill of complaint nor is there in fact any basis for a charge of the use by these defendants of any unfair methods of competition in such trade.

XVII

These defendants admit that these individual defendants are respectively either officers, directors, agents, or employees of the parent company, Armour & Co., its subsidiaries, and that some of the defendants are large, and other smaller stockholders of said parent company and subsidiaries, or one or the other or both, and others of the defendants are not stockholders in either or in any of said companies, and are only, if at all, connected with the various matters alleged and charged in the said petition or bill of complaint, as and while they are so connected with one or the other of said companies as officers or employees; and that they are and can only be proper defendants herein or properly subject to the jurisdiction, order, or direction of the court herein with reference to their action as such officers or employees while connected with such defendant companies, and not otherwise.

These defendants respectively deny each and every allegation of said petition or bill of complaint not herein admitted; and having answered, they pray to be hence dismissed, etc.

Armour & Co.; Armour & Co. of New Jersey; Armour & Co. of Kentucky; Armour & Co. of Texas; Armour & Co. (Ltd.) of Louisiana; The Anglo-American Provision Co.; The Colorado Packing & Provision Co.; Fowler Packing Co.; Hammond Packing Co.; The New York Butchers' Dressed Meat Co.; Atlantic Hotel Supply Co. (Inc.); J. Ogden Armour; Charles W. Armour; A. Watson Armour; Laurance H. Armour; Arthur Meeker; R. J. Dunham, F. Edson White, George M. Willetts; Frederick W. Croll; George B. Robbins.

By CHAS. J. FAULKNER, JR.,
Solicitor for Defendants.

59 In Supreme Court of the District of Columbia

Answer of Morris defendants

Filed February 27, 1920

[Title omitted.]

The joint and several answer of the following-named defendants to the bill of complaint filed herein

Corporations:

Morris & Company, (Maine).
Morris Packing Company (Maine).
Morris & Company (New Jersey).
Morris & Company, Ltd. (Louisiana).
Morris & Company (Pennsylvania).
Joseph Stern & Sons, Inc. (New York).
Brooklyn Beef & Provision Company.
Condit Beef & Provision Company.
Corwin-Wilde Company.
Chamberlain & Company, Inc.
Donnelly & Company, Inc.
National Hotel Supply Company.
J. M. Wilson & Company.
Middletown Beef & Provision Company.
Glenn & Anderson Company.

Individuals:

Edward Morris.
Nelson Morris.
L. H. Heymann.
C. M. Macfarlane.
H. A. Timmins.

Defendants

These defendants now and at all times hereafter saving unto themselves, and each of them, all manner of benefit and advantage of exception which can or may be had or taken to the many
60 errors, uncertainties, and other imperfections in the said bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

Court's jurisdiction

These defendants admit that Morris & Company, of Maine, is engaged in the character of business mentioned and described in the bill of complaint, but say that the bill of complaint does not state facts which show that such business is interstate and foreign commerce.

These defendants deny that they, or any of them, have ever been a party to any contract, combination, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, either in the purchase of their raw material, or in the sale of their finished products; and these defendants expressly and distinctly deny any and all allegations, charges, intimations, or inferences in the bill of complaint contained to the effect that the defendants, or any of them, are in any illegal combination, conspiracy, or contract of any kind or description with the other defendants, or any of them, or with any other person, firm, or corporation, either as to the purchase of their raw material, the sale of their finished product, or otherwise.

These defendants deny that they have in any manner whatsoever, either monopolized, combined or conspired to monopolize, or attempted to monopolize, any portion of the food supply of the Nation; and also deny that they control artificially either the supply or the price of the foods of the Nation; but, on the contrary, these defendants allege that the business of Morris & Company has been, and is being, conducted in accordance with the laws of the land and the rules of good business ethics; that in considering the question of monopoly, the Swift, Armour, Wilson, and Cudahy interest must be considered separately, and not jointly, for each is in actual and active competition with the others and Morris is in actual and active competition with them all.

Object to be attained

These defendants deny that they have, or ever attempted, any monopoly whatsoever in the interstate trade or commerce of live-stock, meat products, or so-called substitute foods; and deny that they have any instrumentalities, facilities, or advantages by which they could build up or perfect any monopoly of meats, meat-food products, or substitutes for meats, or any other article or commodity.

Defendants aver that they have a perfect legal and moral right to deal in the so-called substitute foods or unrelated commodities, and that their dealing in such foods and commodities is sound economically and without question has been and is now of great benefit to the public.

61 The nature of the business and method by which it is handled

These defendants admit that the principal business of Morris & Company, of Maine, is the slaughter of live meat animals, the dressing of the carcasses, and the distribution of the dressed meat and the sale of such meat and meat-food products to butchers, who in turn sell the same to the consumers.

These defendants admit that the large packers invented what is commonly known as the refrigerator car. By means of the refrigerator car the dressed meats can now be transported for long dis-

tances and delivered to the great consuming centers in the eastern part of this country in good condition. This is in the interest both of the producers of live meat animals and of the consumers of meats and meat-food products. These cars make it possible for the packing houses to be located near the source of production of the live meat animals, which saves shrink and freight to the producer of such live stock and relieves the necessity of shipping anything to the consuming centers excepting meats, the rest of the carcass being manufactured into by-products. In this respect the refrigerator car has been of great benefit to the country as a whole. It has developed the livestock industry and has cheapened meats to the consumer.

This very advantageous and economical way of transacting this business requires large units, because only with a large volume could the packer afford to own refrigerator and route cars and the branch houses necessary for the distribution of the meats and meat-food products required in the great consuming centers of this country.

After inventing the refrigerator car the large packers were required to build, own, and operate their own cars, because the railroads refused to furnish such cars. These cars have been operated by the packers at a great loss and without any advantage over their competitors, because they pay the same rate on the product shipped in their own cars as that shipped in the cars of others and because the mileage rate paid to the packers for the use of their cars is fixed by the Interstate Commerce Commission.

Stockyards

The stockyard is a market place, where the live meat animals of this country are received, penned, rested, fed, watered, weighed, and sold. The stockyards of this country are absolutely essential not only to the livestock industry but also in getting meat foods for the people. They are not only in theory but in fact public markets where all who wish to buy or sell have had and may have free access and right to trade. The present high state of efficiency in the stockyards of this country is almost entirely due to the packers. It is infinitely better that the control of these yards should be with people who are interested in the industry rather than with people who are interested only in their dividends.

The stockyards, as alleged in the bill of complaint, have always afforded to the cattle raiser the opportunity to speedily dispose
62 of his livestock for an immediate cash price. This is because of the financial strength of the packers. In the past this has been done, regardless of panics, the financial condition of the country, or the number of animals offered for sale, which demonstrates that there must be large units in the packing business. If the borrowing power of the large packers is impaired through needless agitation, improper regulation, or unwise legislation, it may be that in the future all of the livestock offered for sale will not continue to be purchased each day for cash.

As alleged in the bill of complaint, packing houses are naturally located at stockyards, because each is dependent upon the other. The stockyards, furnish the raw material for the packer, and the packer furnishes a spot cash market for the livestock offered for sale in the stockyards. Consequently, the packer is directly and vitally interested in building up the yards and the livestock market at all points where he may have a packing house. Originally many of the smaller yards near the source of production were not efficiently or successfully conducted. This was the great underlying cause that influenced the packer to become interested in such yards.

The ownership of the capital stock of the Stockyards Company can not possibly exercise any control or influence over the prices obtained for livestock bought and sold in the yards, for the reason the yards are public and free for everybody to bid upon stock offered for sale therein.

It is natural and proper that there should be located at the stockyards commission men skilled in valuing, handling, buying, and selling of livestock and to look after the livestock intrusted to their care for sale and disposition at the yards.

The Stockyards Company very properly makes charges for services rendered, as alleged in the bill of complaint, and the Stockyards Company is entitled to fair and reasonable compensation for such services, and this regardless of the ownership of the capital stock of the company. The charges at the various yards in the past have been fair and reasonable for the services rendered.

These defendants, further answering, state that none of the Morris corporation defendants has any interest whatsoever in any of the stockyards of this country. The Morris individual defendants holding interest in the stockyards have been, and are, willing to dispose of such interests, providing a purchaser can be obtained therefor who will pay what said interests are fairly and reasonably worth and who at the same time will insure the future efficient operation of such yards.

Packing-house sites

There has been no undue or improper tendency to "centralize" the livestock markets of this country, and it was not on account of any such alleged "tendency" that packing houses were located at the stockyards, and vice versa, as intimated in the bill of complaint. The stockyards could not exist without packing houses, because the packers are the principal buyers at the yards. Neither could a packing house exist without a stockyard, unless the packer should
63 buy his raw material in the country direct from the owners of the livestock, which policy, we submit, neither the producers nor the Government would favor.

These defendants deny that the stockyard companies generally own or control all of the packing-house sites at such yards; also deny that the owners of the stockyards are in a position to determine or do

determine what packing companies, and how many plants, shall be established at the yards.

Further answering, these defendants say that it is to the decided advantage of the stockyards to have as many packing houses as possible located at such yards. Each additional packing plant builds up the livestock market for the yards company, as the yards company makes its money out of yardage and feedage charges. Therefore, the greater number of head passing through the yards will necessarily increase the receipts of the stockyard company. It has always been the fixed policy of the stockyard companies to secure additional packing plants at the respective yards. It is not a fact that there has been any discrimination whatever in that regard. On the contrary, the stockyard companies, regardless of their ownership or control, have always been anxious to get additional packing plants located at their respective stockyards.

Sites for stockyards banks and cattle loan companies

These defendants admit that a very large amount of capital is required to finance the raising and preparing for market of live meat animals, upon which the consumers of this country depend for their meat and meat-food products. It is not practicable for the banks of the country generally to loan this money, taking chattel mortgages on the cattle as security, which is ordinarily the only security offered, because of the character of security and the distant location of the banks therefrom. Accordingly there are a great many cattle loan companies in this country which maintain offices and representatives in the locality of the cattle given in security for loans, and thus these cattle loan companies are in a position to keep in touch with the loans and inspect the security from time to time. The majority of these cattle loan companies have no packer interest in them whatsoever.

The mode of procedure is for the cattle loan companies to take the notes of the cattlemen, secured by chattel mortgages on the cattle, and then the cattle loan companies indorse and guarantee this paper to the banks scattered all over the country. Most of this paper goes to eastern banks. The banks take and pass this paper out to their customers, not upon the security of the mortgaged cattle, which are generally at a great distance from the banks, but upon the indorsement of the cattle loan company. For the inspection of the security and guarantee of the paper the cattle loan company gets a reasonable commission, generally the difference between the interest which the borrower pays and the interest retained by the bank buying the paper. In this way it has been possible for the livestock men of this country to borrow the required money to prepare the live-
64 stock for market, and the cattle loan company has in this way been of great benefit both to the producer and the consumer.

These defendants further state that the cattle loan companies controlled by the big packers have never required the livestock man to

market his livestock except when same is actually prepared and ready for the market. In not a single instance has the packer—controlled cattle loan companies—required prior marketing of livestock, even in case of drouths or other extremity beyond human control, unless, and except, it was in the best interest of the owner of such livestock. The packers, in fact, have had no advantage whatever through such cattle loan companies, except through the encouragement of production. The livestock men have not to any extent been damaged by the interest of the packers in such cattle loan companies, but, on the contrary, have been greatly benefited.

It is in the interest of the livestock men and of everybody else that these cattle loan companies and livestock banks be located at, or near, the principal stockyards of this country.

These defendants deny that the owners of stockyard companies in which they, or any of them, have any interest, have, at any time or place, designated how many, and which, banks or loan companies may establish themselves at the yards. But, on the contrary, there is in fact actual and active competition between the banks and cattle loan companies at all of the large stockyards of this country.

Morris & Company has no stock or other interest in any bank or cattle loan company.

Rendering plants

In the shipment of live meat animals to the market, naturally some of them die, either en route or after reaching the yards. There are not enough of these dead animals at any one stockyard to justify the investment, overhead, and expense incident to the operation of a rendering company. Accordingly, the rendering company that handles the dead animals at any one of the stockyards must and does have additional business, which is generally obtained in the way of dead animals collected from the streets of the city, under city contract. When a company has such a city contract, it is enabled to handle the dead animals at the stockyards on better terms and to better advantage for the producers than otherwise could be done.

From the standpoint of health and sanitation these dead animals must be handled very expeditiously and on that account some one must be charged with the responsibility of their very prompt collection and disposition.

These defendants deny that there is any monopoly at any of the public stockyards of this country for the handling of dead animals at said yards, but state the fact to be that said animals are handled to the best possible advantage and in the interest of the owners of such animals.

Morris & Company has no stock or other interest in any rendering company.

65 Commission men's office space

It is advisable for the commission men and traders at the stockyards to have offices in or near the yards, as alleged in the bill of

complaint, otherwise they could not expeditiously transact the business at the yards for the producers of this country. In the orderly and efficient handling of livestock at the yards it is necessary to allot certain pens to the commission men in order to avoid confusion and delay. The renting of offices and the allotting of pens to commission men at the various stockyards have been done to the interest of the producers and of all concerned, and nothing is averred in the bill of complaint to the contrary. Generally the commission men and traders at the yards have a committee of their own to make these allotments of pens, as the interests of the yards and the commission men are absolutely mutual in this regard.

Terminal railways

These defendants state that it is in the interest of the livestock producers that these terminal railways should be owned and operated independent of any one railroad system, because otherwise the railroad company controlling such terminals would use same to its own advantage and in the interest of its shippers and against the interest of shippers on other railroads. These stockyard terminals were originally brought into existence so that all shippers would be treated alike and so that there would be no discrimination in the handling of livestock into and at such yards. It is of the greatest importance that all livestock should reach the unloading chutes and be unloaded as soon as possible, so as to be rested, fed, watered, and prepared for the early market.

While the bill of complaint does not charge the exercise of any discrimination on the part of the terminal railways at the different stockyards, it claims they have such power. These defendants state most positively that these terminal companies have not discriminated in the matters of sidings, spurs, or other accommodations which may be required by a packing house, and there has been no discrimination along this line against any packer or buyer in any manner whatsoever.

Market papers and journals

As stated in the bill of complaint, the cattle raiser required "full, accurate, and unbiased reports of the demand for livestock, the prices prevailing and the character and kind of stock required," and such information is furnished by the market papers and journals specializing in intelligence of this kind. In years past the daily press printed more extensive, but still inadequate, reports than at the present time, the increased cost of print paper and the reduction in size forcing a curtailment of these reports. The burden of increased cost of production bears more heavily on the small publisher than the large. This situation endangers the future of these publications, and care should be taken that these market papers and journals are not required to abandon the field altogether. Whatever financial aid or assistance which the packers have given these publications in the past has been done in the interest of the

market, and the producers got the benefits thereof. No market paper or journal could successfully falsify either prices or conditions. To do so would be to commit financial suicide, as its integrity and accuracy are the sole measures of its value to its subscribers.

These defendants have no advantage of any kind either over the producer of livestock or the purchaser of their finished products by or through the publication of market papers or journals. The fact is that both the people from whom the packers buy their raw material and the people to whom they sell their product are fully and accurately advised concerning market conditions.

These defendants deny that they, or any of them, own any interest whatever in any of the market papers or journals at any of the stockyards in this country.

Alleged results from control of stockyards

These defendants deny that the control of the stockyards and of the other facilities at the yards would cause the results claimed in the bill of complaint, and with reference thereto would state:

(a) If the profits made by the stockyard company are reasonable (and there is no charge in the bill of complaint that they are unreasonable), then it is wholly an absolutely immaterial, both to the producer of livestock and the consumer of meat, who owns the capital stock in the stockyards so far as profits are concerned. Packer interest in stockyards does not add 1 cent to the cost of the meat to the consuming public. On the contrary, if packer control of the yards means greater efficiency and saving of cost, it is to that extent a saving to the consumer. In other words, the elimination of the packers from interest in the yards would eliminate neither the yards nor the reasonable charges which the yards company is justified in making for its services.

(b) There is no power in a stockyard company to grant a monopoly either to banks, cattle loan institutions, rendering plants, or concerns supplying food for livestock and others, and no such monopoly has been granted or attempted in the past.

(c) The stockyard companies have no power to prevent the establishment of new packing plants at the respective yards or to hamper the growth of those in existence; but, on the contrary, it is to the direct and best interest of the stockyard company to induce the location of additional packing plants and to give such service as would encourage the growth of those in existence. The fact is that the building of additional packing plants has been encouraged by all of the yards.

(d) The present stockyards companies can not prevent the development and limit the number of new markets or centralize and restrict business to the present stockyards. The Morris interests
67 have in the past established now markets in direct competition with the other large packers. In 1921 Morris built a packing

plant and stockyards at Oklahoma City, in direct competition with Swift and Armour at Fort Worth and with Cudahy and Dold at Wichita, being less than 200 miles from each point, and even to the present time Morris must buy live meat animals in the leading markets of this country to sustain and keep its Oklahoma City packing plant in operation. To illustrate: Morris & Company has purchased as high as 40,000 head of cattle in one year at the stockyards in Fort Worth, controlled by Armour and Swift. These cattle were purchased for slaughter at its packing plant in Oklahoma City, operated in active competition with the Swift and Armour plants at Fort Worth.

The South needs packer development and diversified industry, and especially in those sections where cotton can no longer be raised on account of the boll weevil. The climate and the soil both favor the raising of meat animals, and the larger packers have been developing this section both with packing plants and stockyards. If the packer should be denied the privilege of being interested in stockyards, then this development, so much needed and desired, may be arrested and defeated.

(e) There has never been any exclusive access to information concerning receipts and sales of livestock and its disposition, either to the producer, the packer, or anyone else. This information has always been and is public and accessible to everybody alike.

The Bureau of Markets, under the Department of Agriculture, is maintained for the purpose of obtaining and disseminating this species of information to all concerned.

Branch houses

A branch house is primarily a market, or sales place, for the disposition of packing-house products at a distance from the packing plant. Branch houses are also frequently used for manufacturing purposes, such as the smoking of hams and bacon, and the making of sausage and other similar products; the consuming public thus gets the most wholesome product.

The branch house must have refrigeration, for meat is a very highly perishable product. Before we had refrigeration, beef was shipped to the eastern markets in box cars, when the weather was cold enough, and sold at auction on arrival. This costly, insanitary, wasteful, and extravagant method was soon discarded when the big packers invented and brought into use the refrigerator cars and the branch house.

The branch house is ordinarily located on a switch track near the business center of the city, and is managed by experienced men who know the wants of their particular community. At first the branch house was a crude affair, but the modern branch house costs from $50,000 to $300,000.

The branch house is in the interest of both the producer and consumer, because, without the distributing facilities of the big packers,

of which the branch house is a part, congestion would take place at the packing plant and the packer could not buy the live meat
68 animals shipped to the yards. Consequently, it is in the interest of the producer that the packers have the proper marketing facilities, so that the packing plant will not be congested with the finished product, and so that the packer, by not being a spasmodic buyer, can at all seasons of the year pay a fair price for the live meat animals offered for sale on the market. The branch house not only serves this purpose for the producer but is also the source through which the butcher at all seasons of the year gets his meat and in turn is able to continually supply the consuming public.

With the large packing plants located near the source of production, as they should be (thus saving the producer shrink and freight), the branch house is an absolute essential part of the distributing system of the packer. Meat is a highly perishable product and can only be kept in good condition for a limited number of days, even with refrigeration. Not only is the refrigerator car and the branch house an essential in the distributing system of the packers, but these facilities keep down the waste of meat to a minimum and prevent the increase in price which waste would necessarily entail.

These defendants are not advised as to the number of branch houses maintained by the defendant parent companies, as alleged in the bill of complaint, but these defendants state the fact to be that Morris established its first branch houses in the east in the year 1887, and it now has 186 branch houses, with 2,850 employees.

These defendants further state that the distributing system of the larger packers, including refrigerator cars and branch houses, does not give to them any monopoly in the sale of meats in the great consuming centers or anything else. To illustrate the situation in that regard it may be stated that in New York City, in addition to the defendants, there are more than 75 wholesale dealers and slaughterers, and in Boston, besides the defendants, there are 13 large wholesale dealers and 15 houses that buy from local slaughterers. This is characteristic of all the large cities in the great consuming section along the Atlantic seaboard.

The meat sold through the branch houses must bear the expense of shipment from the packing plant to the branch house, in many instances being a great distance and a large expense. This meat comes in competition with the meat of numberless local slaughterers in all of the cities of this country, which later meat has no expense whatever for transportation and is also free of the expense incident to Federal inspection. Consequently, in the matter of competition the meat of the big packers sold through branch houses is at a decided disadvantage. The branch houses are maintained simply as a matter of necessity and because no better distributing system has ever been suggested or adopted for the transportation of meat from the large packing-house centers, which should be near the source of production to the great consuming centers, which are largely along the Atlantic seaboard.

These defendants further state that a perishable product like meat can not be handled through some common freight house, like farming implements, clothing, boots and shoes, or other staple articles, which do not have to be sold quickly in order to prevent deterioration or complete loss.

69

Route cars

As stated in the bill of complaint, route cars supplement the branch houses and serve the purpose of reaching the small communities where the trade is not sufficiently large to justify an investment in a branch house.

The route car does more than this; it brings to these smaller communities the Federal inspected, sanitary, and finely prepared products of the modern packing house. Through the efficiency of the large packers and the utilization by them of all by-products, these meats and meat food products can be supplied to these small distant communities at less cost than they are supplied through the local butcher. At the same time the Department of Agriculture has determined and reported "that farmers receive smaller relative returns from cattle marketed locally than from those that are shipped to centralized markets."

These defendants are not advised as to the number of route cars operated by the parent companies or the percentage which that number bears to the total number operated in the packing industry. These defendants state that Morris & Company operates 265 car routes in this country, reaching 5,074 towns, and the business done from these route cars comes in direct and active competition not only with the products of the large packers but also with the local butchers and slaughterers, many of whom are not Federal inspected and have no expense of shipment whatever. The percentage of route cars operated by the five large packers as compared with the number of route cars operated by the packing industry as a whole does not begin to describe the amount of competition which the business done from these route cars comes in contact with. If these route cars were not in existence the strong probability is that the local butchers and slaughterers would increase the price of meat to the consuming public. These defendants maintain that these route cars are now operated, not only within the law and without any undue or improper advantage to the packers, but they are in fact operated to the great benefit and advantage of the consuming public in the towns and communities reached by them.

Auto trucks

These defendants do not maintain any auto trucks that serve as route cars, but insist that the consuming public is entitled to the most efficient and best means of distribution of meats and meat food products that can be devised.

Cold-storage warehouses

The bill of complaint alleges that the cold-storage warehouse enables the packer to extend the volume of his business. Anything that extends volume in the meat-packing business is in the interest of the public generally, both producer and consumer, because a big volume enables the packer to utilize the by-products to the
70 fullest possible extent. That is why the big packer has so many departments. That is why the big packer has a large force of chemists and highly trained specialists who are constantly endeavoring to produce more and more by-products from the offal, the effect of which is to bring down the price of meats for human consumption. That is one important reason why this country must continue to have big units in the packing industry.

Generally speaking, the cold-storage warehouse enables full production in seasons of plenty to be carried over to seasons of scarcity, thus stabilizing the prices for the producer in seasons of plenty and at the same time making the prices lower to the consumer in seasons of scarcity.

The chief function of the cold-storage warehouse in the meat-packing business is to preserve the surplus meats until they can be advantageously marketed, which is in the interest of both the producer and the consumer. At all times there are extraordinary runs of cattle, hogs, or sheep at the various yards. Sometimes this is due to usual and normal causes, such as the end of the grass season for cattle, or in the fall for hogs; and at other times it is due to something unusual and out of the ordinary, as a drought in the Southwest or a cholera scare among the hog feeders. Under such circumstances if there were no cold-storage warehouses to take care of this temporary oversupply this livestock could not be marketed and would represent a clean waste in the food supply of the Nation, which in turn would enhance the price of meats to the consumer, not to mention the loss to the producer.

If it had not been for the cold-storage warehouses along the Atlantic seaboard our armies and the armies of our associates could not have been fed with American meat during the war, as these warehouses enabled us to store the meats at places reasonably accessible to seaboard while waiting for the ships.

Morris & Company owns but one cold-storage warehouse, which is located in Chicago. This warehouse has a capacity of about 50,000,000 pounds, a large part of which is used for meats in process of curing. It is necessary for the company to store almost that amount in outside public warehouses, for which Morris & Company pays the regular published rates regulated by the various State utility commissions where the different warehouses may be located. Morris & Company has never had, or exercised, any control over public warehouses.

These defendants deny that they have any possible advantage over their competitors through the cold-storage warehouse; also deny

that the cold-storage warehouse has ever been used by them, or any of them, as a means to control the price of meats and so-called substitute foods.

The parent companies' acquisition of above-described facilities and their purpose in doing so

These defendants deny that they, or any of them, purchased or acquired any interest whatsoever in stockyards or the facilities
71 pertaining thereto, the stockyards terminal railways or market papers, in order to repress and discourage the development of other packers and slaughterhouses or to control the shipments of meat to the various markets.

These defendants state that there are more packers in competition with them than ever before in the history of the industry; that there are more than 300 meat packers doing an interstate business under Federal inspection, and there are more than 1,000 local slaughterers doing an intrastate business, all in keen and active competition with these defendants.

These defendants deny that they, or any of them, ever purchased or acquired any interest whatever in stockyards, terminal facilities, or market papers by concert of action and pursuant to a common understanding with the other defendants in this case, or with any other person or persons; and these defendants have never acquiesced in the acquisition of interest in or control over stockyards by any of the other defendants.

These defendants deny that, in pursuance of a common purpose, plan, and desire, outside investors and packers have gradually been forced out as dominating factors, both in the ownership and management of the most of the important stockyards, and have been replaced by the parent companies or their representatives. The fact is that none of the Morris corporations have any capital stock or other interest whatsoever in any stockyard in this country. The largest stockyard in the country—Chicago, is not controlled by the packers, but, on the contrary, only one individual packer has any interest therein, and that but 19 per cent. More than two-thirds of the capital stock of the second largest stockyard in the country—Kansas City—is owned by people wholly unconnected with the packing industry, and the capital stock of this company is dealt in very extensively on the stock exchange, and any person is privileged to buy a substantial interest therein. Large blocks of the capital stock of the Omaha yards, the third largest stockyard in this country, are owned by people wholly unconnected with the packing industry. More than one-third of the capital stock of the East St. Louis yards, the fourth in size, is owned by people who are not connected with the packing industry. But the smaller yards near the source of production, like the Denver, Fort Worth, Oklahoma City, and Wichita yards, which can scarcely support two packers, and which render the great service to the producers, relieving them of both freight and shrink, are not so attractive

to the investing public, and these are the yards which have been built up and are controlled by the packers.

These defendants further state that the interests acquired by the packers in the various stockyards of this country were generally acquired through necessity and in order that such yards might be built up and maintained efficiently, and this packer interest in these yards has resulted generally in the extension and building up of the market.

These defendants deny that they, or any of them, ever acquired any interest in any stockyard, stockyard terminal, or stockyard
72 paper through any of the means or methods set out and described in the bill of complaint.

These defendants deny that the Morris parent company, charged in the bill of complaint, has granted any exclusive privileges, such as the right to purchase dead animals, the right to furnish supplies and facilities, and the location of cattle banks and cattle loan companies, to concerns and corporations in which these defendants, or any of them, were interested; also deny that they employed the powers and privileges more specifically set forth and discussed in the bill of complaint under the heading "Nature of the business and method by which it is conducted."

These defendants expressly and distinctly deny that they, or any of them, have done any of the things alleged in the bill of complaint for the purpose or with the effect of discouraging and suppressing the establishment of packing establishments or dwarfing the growth of any packing company whatsoever.

These defendants further deny that they, or any of them, have attempted to monopolize the meat industry of the country or to artificially control the ultimate price which the consumer pays for meat or meat products.

Contracts in restraint of trade

Defendants expressly and distinctly deny each and every allegation and averment in the bill of complaint under this heading.

Further answering this charge of an agreement as to percentage of purchase, these defendants deny that they, or any of them, have any agreement or understanding whatsoever with any person, firm, or corporation concerning or affecting its purchases of livestock, and in that connection state most positively that the business of Morris & Company is regulated and controlled entirely and absolutely by the law of supply and demand, and that its purchases of livestock are not regulated or controlled to any extent whatever by the purchases of Swift & Company, Armour & Company, Wilson & Company, the Cudahy Packing Company, or any or either of them, or of any other person, firm, or corporation.

These defendants state that there is not the uniformity of purchase between the parent companies that is intimated in the bill of complaint, but an approximate uniformity of purchase between these

companies is of no particular significance, as these businesses have been many years in developing, and each company now has its regular organization, its ordinary and usual trade, its plant capacity, and distributing system. Moreover, there has been a very determined fight for several years from certain quarters to hold these companies to their present volume and not to permit them to grow or extend, if not to disintegrate them altogether. All of this would tend to bring about even a greater uniformity of purchase than the law of general average.

The uniformity appears closer than it actually is because of the tremendous volume incident to the packing business. In the figures of percentage the difference of 1 per cent of the average mind would not appear great, and yet that 1 per cent may represent several hundred thousand head of cattle. The difference of 1 per cent in the Morris buy between the years 1915 and 1917, which is conceded by the Government, represents 76,000 cattle, which is approximately 10 weeks' kill in Chicago or 3 weeks' kill at all of the Morris plants.

Further answering, these defendants state that there is much more uniformity of purchase by the leading interests in any stabilized basic industry in this country having competition than there is in the packing industry, and that this alleged uniformity of purchase in the packing industry, whatever uniformity there may be, is due to healthy conditions and sound economic laws, except that brought about by forces and influences outside of the packing industry itself.

This identical charge of uniformity of purchase was made by the Government in a criminal case instituted by the Government in Chicago against certain of the officers of three of the defendant parent companies, and after hearing the testimony for several months, this precise question being gone into very fully, the jury, in March, 1912, returned a verdict in favor of the defendants, upon the testimony of the Government alone. The judgment based upon that verdict necessarily means that there was no undue uniformity of purchase by the packers and is, in fact, an adjudication on that point.

This Government suit of 1912 was on the theory that three of the parent companies in this case maintained a certain percentage as to buy of livestock, while this present suit is against five parent companies and their officers, and yet there is no allegation in the bill of complaint as to how, when, or why the Government changed its position from three to five or when the two additional parent companies became parties to the present alleged agreement, or how, or to what extent, the two additional companies have affected the alleged percentage.

These defendants further state that, during the war, the Government ordered and directed the packers of the country generally, including the defendants, to maintain their respective volumes of business. The Government can not consistently order a certain thing done and then afterwards complain of its being done. Consequently, the allegations in the bill of complaint do not set up any facts con-

stituting a violation of any law on this point within three years next preceding the filing of the bill of complaint.

Control of substitute foods

The statement in the bill of complaint that defendants had eliminated competition in meat products is wholly without foundation in fact, as is also the statement that the packers commenced the handling of foods and products ordinarily handled by wholesale grocers and produce dealers in order to keep the price of meats from advancing out of proportion to these other foods.

The fact is, that Morris & Company largely confined its activities to the production and handling of meat food products until the latter part of 1917. At that time the cost of live meat animals, labor,
74 taxes, supplies, and everything entering into meat had advanced tremendously. The irregular receipts of cattle, sheep, and hogs due to shortage of livestock caused irregular markets. There are always slack seasons in the sale of the meats. Morris & Company had fixed an overhead for the maintenance of its branch houses and the distributing system. During the war the meat that was furnished to our Government and the governments of our associates did not pass through the branch houses, and as the Government discouraged the eating of meat by the civilian population in order that the armies and navies might be properly fed, the employees in the branch houses were not fully engaged and had plenty of time to handle additional lines. In order to meet these conditions and to keep down the expense of this distributing system, Morris & Company began the handling of canned fruits and vegetables. The company had the branch houses, the sales organization, and delivery equipment, and expenses were going on whether the meat business was active or quiet. It was, therefore, decided that it was good business to keep all of these men and the equipment busy the year around, and in order to do so canned fruits and vegetables were added to the Morris lines.

In addition to the utilization of the entire organization to its full capacity, these added lines enabled Morris & Company to make more frequent turnovers, smaller sales to the retailer, who ordered more frequently, reduced his investment in stock and gave the consumer a better product. Morris & Company was often encouraged by retailers to add to its line as they appreciated the service and could save time in both purchasing and delivery.

In the handling of groceries Morris & Company had no advantage whatever in freight rates over its competitors, and the only advantage which the packer had in handling groceries and so-called unrelated lines was the advantage due to his efficiency, and it is perfectly legitimate and proper that the consuming public should receive the benefit of such legitimate advantage.

These defendants deny that Morris & Company fixed prices so low as to gradually eliminate competition and to exterminate the

produce dealer and wholesale grocer. It is an admitted fact that the number of wholesale grocers and the volume of business done by them since Morris & Company entered this field in the latter part of 1917 has increased more than 10 per cent. This conclusively demonstrates that, instead of eliminating competition, or even injuring the business, the competition of the packers has stimulated and been beneficial to the business.

The entire business done by Morris & Company in the so-called unrelated lines, which consisted almost entirely of canned fruits and vegetables, amounted to less than 2 per cent of the total annual sales of the company. The total business done by all of the packers in lines unrelated to meats amounts to less than 3 per cent of the entire volume transacted by the wholesale grocers and packers.

In view of the substantial growth of the business of the wholesale grocers during the last few years, the statement in the bill of complaint to the effect that, unless prevented by a decree of this
75 court, the defendants will, within the compass of a few years, control the quality and price of each article of food found on the American table, is nothing short of the ridiculous. On the contrary, these defendants insist that it is in the best interest of the consuming public that it should get the benefit of the distributing system and added competition of the packers in these so-called unrelated lines. To eliminate the packers from this field would merely mean to cut down competition to that extent, to which the consuming public is entitled. The handling of groceries and foods other than meats by the packers has resulted in a better product and a saving of foods through wastage and destruction. While the wholesale grocer has his place in the economic scheme of this country, still it would be to the interest of the people generally if the efficient competition of the packers would force the wholesale grocer to revise his business methods and cut down his costs.

All of the profits made by Morris & Company in the handling of these so-called unrelated lines finally went into the packing-house profits and, to that extent, enabled the packer to sell meat at a lower price. Consequently, the elimination of the packers from these so-called unrelated lines would naturally result either in lower prices for the livestock or higher prices for meats.

Financial growth, present net worth, and volume of business

These defendants are not advised concerning the alleged growth, profits, sales, or net worth of Swift, Armour, Wilson, and Cudahy between the years 1904 and 1919, but these defendants do state that the total annual profits of Morris & Company, from every source whatsoever, for this period of 16 years was but 8.41 per cent on the capital and surplus invested. Out of these profits dividends have been paid to the stockholders representing but 1.71 per cent on the capital invested. The balance of profits, to wit, 6.70 per cent on the capital invested, has been added to surplus.

A table showing the capital stock, the surplus, and the profits of, and the dividends paid by, Morris & Company for each of the years 1904 to 1919, both inclusive, is as follows:

Year	Capital	Surplus	Profits	Dividend paid
1904	$5,000,000.00	$12,883,983.17	$1,656,589.39	$240,000.00
1905	5,000,000.00	14,080,582.56	2,023,643.83	240,000.00
1906	5,000,000.00	15,864,226.28	1,796,615.65	240,000.00
1907	5,000,000.00	17,420,844.91	2,251,673.39	1,800,000.00
1908	5,000,000.00	17,872,518.30	2,656,208.55	315,000.00
1909	5,000,000.00	20,207,907.65	2,960,578.26	450,000.00
1910	5,000,000.00	21,827,498.01	748,194.96	435,000.00
1911	5,000,000.00	22,130,680.97	1,054,851.64	180,000.00
1912	5,000,000.00	22,993,532.61	1,912,853.49	180,000.00
1913	5,000,000.00	24,626,186.10	1,915,305.94	300,000.00
1914	5,000,000.00	26,193,183.04	2,205,672.69	450,000.00
1915	5,000,000.00	27,838,855.73	2,321,414.78	750,000.00
1916	5,000,000.00	29,510,270.51	3,032,212.90	1,000,000.00
1917	5,000,000.00	32,142,482.41	5,301,071.47	150,000.00
1918	5,000,000.00	37,293,554.89	4,217,978.84	300,000.00
1919	5,000,000.00	41,211,433.72	700,941.00	300,000.00

76 The profit on each dollar of sales by Morris & Company for the years 1910 to 1919, both inclusive, is as follows:

Year	Profit on each dollar of sales
1910	$0.0081
1911	.0086
1912	.0136
1913	.0117
1914	.0139
1915	.0129
1916	.0170
1917	.0181
1918	.0106
1919	.0016

These defendants are in no way connected with Swift, Armour, Wilson, or Cudahy and are not in a position to state as to their profits, but these defendants are advised and verily believe that the profits made by the five big packers have been substantially less than the profits made by any other large basic industry in this country.

These defendants deny that the Government has not ascertained all of the profits made by the defendants and state the fact to be that departments and representatives of the Government have been through their books and records very thoroughly and for many years, and are familiar therewith, and, under these circumstances, these defendants state that the petitioner is not justified in alleging that there are profits which have not been ascertained.

Number of controlled companies

Unfortunately, the allegations in the bill of complaint under this heading are vague, indefinite, and uncertain. These defendants are not advised as to the number of corporations in which the Swift, Armour, Wilson, and Cudahy companies are interested; nor are these defendants advised as to what is included in the word "families"

under the averment in this regard. These defendants do say that the Morris organization is interested, comparatively, in very few corporations and if the petitioner would specifically allege or set out the names of the corporations in which it is claimed that any of the Morris defendants are interested, then these defendants would answer such an allegation with certainty and precision.

These defendants are absolutely certain, however, that the Morris organization has no greater number of corporations than is ordinarily identified with a business having the volume and magnitude of Morris & Company. The corporations which Morris & Company do own or control were acquired, and are held and controlled, legally and not in violation of any law.

77 Extent of industrial control in the substitute foods and unrelated commodities

It would not be an enormous undertaking to determine the degree of control exercised by the defendants in all of the various activities mentioned in the bill of complaint, and there is positively no truth in the statement that, if the growth is permitted to continue unchecked, it will be complete within a few years. The fact is, that it is now within the complete power of the petitioner to ascertain and determine, if that has not already been done, just to what extent Morris & Company is engaged in any of these unrelated lines.

Of course, these defendants are not familiar with the alleged growth of the business of Armour & Company in these unrelated lines, as alleged in the bill of complaint.

Morris & Company disclaims any purpose whatever on its part to secure control of the market for so-called meat substitute foods, or any portion thereof.

The parent companies do not control either the output or the price of products marketed through their distributing facilities, because they must pay exactly the same freight rate on goods shipped through these facilities as if they were shipped otherwise.

Individual defendants

The individual defendants are all members of the board of directors of Morris & Company, of Maine; Edward Morris is president, Nelson Morris is chairman of the board, L. H. Heymann is vice president, C. M. Macfarlane is vice president and treasurer, and H. A. Timmins is secretary and assistant treasurer of Morris & Company, of Maine.

The defendant, Nelson Morris, was not on the pay roll of Morris & Company between March 1, 1918, and June 11, 1919, and took no part whatever in the affairs of the company during that time.

There is no foundation in fact for the statements in the bill of complaint that there is any effort or attempt on the part of these

individual defendants, either for themselves or for others to control the meat pro'ucts or so-called substitute foods in the United States.

Corporation defendants

The history of the growth and development of the Morris organization is merely the recital of thrift, economy, efficiency, strict personal attention to business, and the leaving of the earnings in the business to accumulate; in another form, it is the tale of interest compounded. This organization has been three generations in the making. Nelson Morris, grandfather of the present heads of the business, was the original founder. More than 60 years ago he started in business as a sheep driver in the Chicago yards with a total capital of 50 cents. He became the largest feeder of cattle in the world, feeding as high as 60,000 head at one time, making big money in selling his cattle to the packers, and the money so
78 made went into the packing business. The capital stock of Morris & Company has always been closely held, and its legitimate growth, with increasing values in this country, can thus be easily understood.

The original corporate organization was the Fairbank Canning Company, but the business was in fact conducted as a partnership by Nelson Morris and his sons under the firm name of Nelson Morris & Company until the present parent company, Morris & Company, of Maine, was organized.

It can be asserted with complete confidence that even during the period of business development in this new country of unparalleled natural resources and advantages, that the packing industry was far above the average in business morals, and that the industry continues to be conducted with honesty of purpose and scrupulous regard for the laws of the country and the equities of the producer and consumer.

There is a strong disposition in certain quarters of this country to have the Government interfere with private business by the creation of bureaus to control and run the business, which necessarily means inefficiency, politics, and added cost to the consuming public. This policy in its developed state would lead to paternalism and finally Government operation, which would mean the destruction of private initiative and personal ambition, which has been the genius of American business.

In this country of shifting extremes the preservation of equal opportunity to all American youth, such as that possessed by the founder of the Morris organization, is of vastly more importance than everything else involved in this litigation.

These defendants state that Morris & Company, organized under the laws of the State of Maine on October 16, 1903, with a capital stock of three million dollars ($3,000,000), is the company designated in the bill of complaint as the parent company in the Morris group,

and said company has its principal place of business in the city of Chicago, Ill., and owns and operates a packing house in said city and also in the cities of East St. Louis, Ill.; St. Joseph, Mo.; Kansas City, Kans.; Omaha, Nebr.; and Oklahoma City, Okla. Its principal business is the purchase and slaughter of live meat animals and the sale of the finished products thereof; the said company, through its subsidiaries, maintaining selling branches in the principal cities of the United States.

The Morris subsidiary defendants mentioned in said bill of complaint are as follows:

The Morris Packing Company was organized under the laws of the State of Maine on September 28, 1912, with a capital stock of twenty-five thousand dollars ($25,000), and conducts branch houses at Little Rock and Helena, in the State of Arkansas, selling Morris products, all of the capital stock of said company being owned by Morris & Company, of Maine.

Morris & Company, the New Jersey corporation, was organized under the laws of New Jersey on December 27, 1902, and has a capital stock of one hundred thousand dollars ($100,000), and operates the selling branches for the Maine corporation in the United States,
with the exception of those branches in the States of Texas,
79 Louisiana, Pennsylvania, Maine, and Arkansas, all of the
capital stock of said company being owned by Morris & Company, of Maine.

Morris & Company, the Louisiana corporation, was organized under the laws of the State of Louisiana on October 11, 1910, with a capital stock of fifty thousand dollars ($50,000), and conducts the Morris selling branches in the States of Louisiana and Texas, all of the capital stock of said company being owned by Morris & Company, of Maine.

Morris & Company, the Pennsylvania corporation, was organized under the laws of the State of Pennsylvania, on October 6, 1910, with a capital stock of fifty thousand dollars ($50,000) and operates the Morris selling branches in the State of Pennsylvania, all of the stock of said company being owned by Morris & Company, of Maine.

Joseph Stern & Sons (Inc.) was incorporated under the laws of the State of New York in the spring of 1910, and has a present capital stock of two million dollars ($2,000,000), and now operates a meat-packing plant in the city of New York, all of the capital stock being held by Morris & Company, of Maine.

The Brooklyn Beef & Provision Company was incorporated under the laws of the State of New York on September 30, 1912, with a capital stock of five thousand dollars ($5,000), and merely operates a branch house in the city of Brooklyn, N. Y., selling the Morris products, all of the capital stock of said company being owned by Morris & Company, of Maine.

The Condit Beef & Provision Company is a corporation incorporated under the laws of the State of New Jersey in July, 1909, with a capital stock of five thousand dollars ($5,000), and merely operates a branch house in East Orange, N. J., selling the Morris products, all of the capital stock being held by Morris & Company, of Maine.

The Corwin-Wilde Company was incorporated under the laws of the State of Massachusetts on March 29, 1893, with a capital stock of fifty thousand dollars ($50,000), and merely operates a branch house in the city of Boston, Mass., selling the Morris products, all of the stock being held by Morris & Company, of Maine.

Donnelly & Company (Inc.) was incorporated under the laws of the State of Massachusetts in December, 1912, with a capital stock of fifty thousand dollars ($50,000), and operates a branch house in the city of Boston, Mass., selling the Morris products, all of the capital stock of said company being held by Morris & Company, of Maine.

The National Hotel Supply Company was incorporated under the laws of the State of Illinois on March 19, 1901, with a capital stock of five thousand dollars ($5,000), and operates certain branch houses in the cities of New York and Philadelphia, selling the Morris products, all of the stock of said company being held by Morris & Company, of Maine.

Chamberlain & Company (Inc.) was incorporated under the laws of the State of Massachusetts on February 27, 1907, and has a present capital stock of two hundred thousand dollars ($200,000) and operates certain manufacturing and selling branches in the city of Boston, Mass., one thousand three hundred and thirty-four (1,334)
80 shares of the capital stock of said company being owned by Morris & Company, of Maine, the rest of said capital stock being owned by parties wholly unconnected with the Morris organization.

J. M. Wilson & Company was incorporated under the laws of the State of Massachusetts on December 23, 1915, with a capital stock of twelve thousand dollars ($12,000), and this company merely operates a wholesale meat market in Dover, N. H., Morris & Company, of Maine, owning capital stock of the par value of nine thousand dollars ($9,000), and the rest of the capital stock of said company being owned by parties wholly unconnected with the Morris organization.

The Middletown Beef & Provision Company was incorporated under the laws of the State of Massachusetts on January 7, 1914, with a capital stock of twelve thousand dollars ($12,000), and merely operates a wholesale meat market in Middletown, Conn., Morris & Company, of Maine, owning capital stock of the par value of eight thousand dollars ($8,000), the rest of the capital stock being owned by people wholly unconnected with the Morris organization.

Glenn & Anderson was incorporated under the laws of the State of Illinois on December 14, 1905, with an authorized capital stock

of ten thousand dollars ($10,000), of which amount stock of the par value of eight thousand seven hundred fifty dollars ($8,750) has been issued, which company operates a wholesale meat market in the city of Chicago, Ill., Morris & Company, of Maine, owning forty-four and one-fourth (44¼) shares of said capital stock, the rest owned by persons not connected with the Morris organization.

It is not the fact, as alleged in the bill of complaint, that only those subsidiaries which are substantially 100 per cent parent company owned and which are engaged either in slaughtering, packing, or the selling of meats have been made parties defendant. On the contrary, it will be observed that the interest of Morris & Company in several of the above corporations does not even approach 100 per cent.

Defendants deny that the Western Meat Company, Oakland Meat & Packing Company, and the Nevada Packing Company are subsidiaries of Morris & Company.

Some pertinent facts and suggestions in connection with the packing industry

These defendants feel justified in this honorable court of equity in calling attention to some of the pertinent facts involved in this litigation and to some of the problems and difficulties which they encounter in endeavoring to do equity to all with whom they come in contact, and that means the whole population of the United States, for they deal in a necessity of life—food.

Equity demands that the producer of livestock be paid a fair price for his animals. Equity also demands that the consumer be served with the packers' finished product at the lowest possible cost. Equity, however, in the view of the stock raiser means high prices for his cattle, while equity to the public means cheap meat on the
81 table. It is practically impossible to please both, for there can not be cheap meat on the table of the consumer when the producer receives high prices for the live meat animal.

Between this Scylla and Charybdis the packing industry in the past has been tossed in all directions by angry winds, sometimes blowing from the ranges, sometimes from the combined kitchens of housewives, storm tossed themselves by the mounting waves of the cost of living, and sometimes from the cavernous mouths of politicians whose interest in the matter is distinctly less honest than that of the producer and consumer. Thus the packer has suffered from agitation and misrepresentation; he has been a tempting target for time-serving aspirants for public favor and he has furnished campaign shibboleths. While equity has been demanded of the packer, and to the best of his ability he has rendered it to all, still equity has seldom been conceded to him.

The packing business is so intimately interwoven in the daily existence of every man, woman, and child in the Nation, so identified

with their welfare and health, that it is extremely sensitive to criticism, and doubly so because it deals in a highly perishable product. These attacks cause not only moral but material damage.

The packing industry can not justly be blamed for the present high cost of living, because it gets less than 2 per cent profit out of its total sales (representing approximately one-fourth of 1 cent per pound of dressed meat), while the producer gets 85 per cent, and the balance goes to labor, freight, and other expenses. In the last few years packing-house labor has advanced more than 150 per cent, and everything that goes into meat has advanced in proportion; and yet meat has not advanced in comparison with other necessities, and within the last six months meat at wholesale has declined 35 per cent.

We submit, in all candor, that we have reached the point where equity must be done to this vital industry, as well as to the producer and the consumer, because its future very closely affects the welfare and the happiness of all the people. It can only stand so much strain. It must not be torn down through prejudice or passion or even a misunderstanding of the great facts which point to the eternal justice of this controversy.

The large packers are perhaps the largest borrowers of money of any industry in the world, because large sums are required to buy for cash the live meat animals offered daily for sale in the stockyards. The large packers are expected to "clean up" the yards every night. It also takes large sums of money to carry the stocks, transport the meats to and distribute them in the great consuming centers at a distance from the packing houses, and to make a market for American meats in foreign countries. This export trade is in the interest both of the American livestock producer and of American labor. If the borrowing power of the packer is destroyed, this complex industry will be in a worse mess than the railroads; production will go down and the price of meats will necessarily go up. It is easier to tear down than to build up, as the world is now learning in this period of reconstruction.

82 It is but just and proper that this honorable court should know the great and controlling facts underlying this industry and the difficult and delicate problems with which it is constantly confronted. The packer is in the nature of a buffer between the producer and the consumer. He is the manufacturer and distributor of meats and meat-food products for the people. If he does his work efficiently and at a reasonable cost, if the toll he exacts for the manufacture and distribution is fair and reasonable, then he performs a great and vital work for the people generally, and the machinery and efficiency with which this work is done should never be destroyed or impaired. It is just as important that this vital industry should be treated fairly and justly by the public as that the public be treated fairly and justly by this industry.

These defendants have never attempted or desired any monopoly in foods. They have never taken a position of defiance to the Government. On the contrary, they have honestly tried to observe the laws governing their business, not only in letter but in spirit as well. They desire to cooperate with the producer and to treat the consumer fairly. They want to deserve the confidence of all the people. The present efficiency and marketing system of the packing industry should be preserved to the people for all future time, but this industry can not survive constant agitation and criticism.

These defendants stand ready and willing to meet the views of the Government along fair lines that would tend to bring about a better and more equitable understanding between this industry and the public, to the end that the present efficiency and lasting benefits of this great industry may be preserved and perpetuated for the American people.

The prayer

These defendants say that the bill of complaint does not state a good cause of action and does not aver facts which would entitle the petitioner to any relief in a court of equity.

Further answering, these defendants deny that the petitioner is entitled to the relief, or any part thereof, in the said bill of complaint demanded, and pray the same advantage of this answer as if they had pleaded or demurred to the said bill of complaint; and pray to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N. J.), Morris & Company, Ltd. (La.), Morris & Company (Pa.), Joseph Stern & Sons, Inc. (N. Y.), Brooklyn Beef & Provision Company, Condit Beef & Provision Company, Corwin-Wilde Company, Chamberlain & Company, Inc., Donnelly & Company, Inc., National Hotel Supply Company, J. M. Wilson & Company, Middletown Beef & Provision Company, Glenn & Anderson Company, Edward Morris, Nelson Morris, L. H. Heymann, C. M. Macfarlane, H. A. Timmins, Defendants.

By M. W. Borders,
Solicitor for Said Defendants.

In Supreme Court of the District of Columbia

Filed February 27, 1920

[Title omitted.]

83 *Answer of the Wilson defendants*

The joint and several answers of the following-named defendants to the bill of complaint filed in this cause, who are designated in said bill of complaint as Wilson defendants:

	Organized under laws of—
Corporation defendant named as parent company:	
Wilson & Co. (Inc.)	New York.
Corporation defendants named as subsidiaries of the parent company:	
Wilson & Co.	New Jersey.
Wilson & Co. (Inc.), of California	Nevada.
Wilson & Co. (Inc.), of Louisiana	Louisiana.
Wilson & Co. (Inc.), of Oklahoma	Oklahoma.
South Dakota Provision Company	South Dakota.
Gotham Hotel Supply Company (Inc.)	New York.
Standard Beef Company	New York.
Stiefel O'Mara Company (Inc.)	New York.
Drexel Packing Co.	Illinois.
Albert Lea Packing Company (Inc.)	Virginia.
Mississippi Packing Company (Inc.)	Virginia.
Morton-Gregson Company	Delaware.
Paul O. Reymann Company	West Virginia.
Standard Provision Company	New Jersey.
Central Products Corporation	Virginia.

84 Individuals named as defendants because of their connection as directors, officers, and employees of Wilson & Co. (Inc.), defendant parent company, and its subsidiary corporation defendants above named:

Thomas E. Wilson.	Arthur L. Smith.	George H. Cowan.
Arthur Lowenstein.	James A. Hamilton.	William C. Buethe.
Jacob Moog.	George D. Hopkins.	Carl F. Burrell.
Vonce De Leon Skipworth.	Adolph E. Petersen.	James C. Good.

These defendants, jointly and severally for answer to the bill of complaint filed in this cause, or to so much thereof as these defendants are advised is material or necessary for them, or any of them, to make answer unto, say:

First. These defendants, for whom answer is herein made, for the limited purposes of this case only, admit that Wilson & Co. (Inc.), the corporation referred to in said bill of complaint as the parent company, is either directly or indirectly, or through subsidiaries, engaged in interstate and foreign commerce, but deny that any of the following acts constitute either interstate or foreign commerce as alleged in said bill of complaint, viz:

(a) The purchase and slaughter of livestock.

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered livestock.

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal.

(d) The production and sale of nonedible by-products and of articles in the manufacture of which those nonedible products are largely used.

(e) The manufacture, canning, or otherwise preparing for the market, sale, and distribution of certain food supplies other than meats.

And these defendants, for whom answer is herein made, severally deny that Wilson & Co. (Inc.), or any of its subsidiaries or any of the individuals named as Wilson defendants in said bill of complaint, are engaged in or are a party to any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations, or are attempting to increase and extend any monopoly therein of the products and commodities referred to in said bill of complaint, or to artificially control the supply and prices of the food supply of the Nation, or that such defendants acting by and through their principal officers, or otherwise, have come to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities referred to in said bill of complaint, or that any of said defendants have created or obtained any monopoly in interstate trade or commerce in livestock, meat products, and substitute foods, as charged in the bill of complaint,
85 or that there has been or is in existence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce between the several States wherein said Wilson defendants or any of them are in any way concerned or a party or parties, but these defendants herein named, and each of them, aver that no such state of facts exists as charged in said bill of complaint as related to said Wilson defendants or any them.

And these defendants, and each of them, further deny that the said defendant parent company and its subsidiary companies who are defendants herein, either by themselves or in concert or combination with any or all of the other defendants named in the bill of complaint, have created or obtained any monopoly in interstate trade or commerce in livestock, meat products, and substitute foods, as charged in said bill of complaint, and deny that any unlawful monopoly by the defendants named in the said bill of complaint exists, as is charged therein.

Stockyards and stockyard terminal railroads

Second. These defendants, for whom answer is herein made, further severally say that neither Wilson & Co. (Inc.), defendant parent company, or any of its subsidiaries, own or control, directly or indirectly, any interest in the form of stock ownership or otherwise in any corporation, firm, or association now owning, controlling, or operating any public stockyard market company, stockyard terminal railroad company, or market newspaper, doing business in the United States, of the class and character referred to in said bill of complaint.

These defendants further answering, aver that notwithstanding that the said Wilson & Co. (Inc.), or any of its subsidiaries, do not own or control, directly or indirectly, any interest in any such companies, there has never been any discrimination against said defend-

ant companies, or any interference with their right to go upon the premises of any of the said stockyard companies and purchase livestock or transact any other business thereon; that neither they, or any of them, nor any other person, firm, or corporation, so far as they, or either of them, are informed, have ever been denied the right to secure desirable packing-house sites in or near any such stockyards; that said stockyards are open to any person, firm, or corporation in the United States who desires to sell livestock thereon, and they are open to any person, firm, or corporation in the United States who desires to go thereon and bid for the purchase of any livestock offered for sale in said stockyards; that to the best of their knowledge and belief, the ownership of stock in any such stockyard by any of the defendants owning any such stock has not, and does not, exercise any control over the prices for which livestock are bought or sold at any of said stockyards, and that ownership or control of any stock in any such stockyards does not give the owner thereof any advantage in the purchase or sale of livestock at any of such stockyards not possessed and enjoyed by any other person transacting business thereat.

86 The defendants, Wilson & Co. (Inc.), and its subsidiaries, are charged with all manner of divers conspiracies in relation to the ownership, operation, and control of public stockyard market companies, stockyard terminal railroads, and market newspapers when in truth and in fact, Wilson & Co. (Inc.), and its subsidiaries, did not at the time and do not now own any of the capital stock or other interest in any such public stockyard market companies, stockyard terminal railroads, or market newspapers, nor did they exercise any control or influence whatever in shaping the business policies of any such companies.

Further answering, the defendants, for whom answer is herein made, deny that the defendant Wilson & Co. (Inc.), and its controlling heads set about to acquire the various stockyards, appurtenances, and privileges incidental thereto, as charged in the bill of complaint, and the defendants deny that there was any concert of action or common understanding between the parent companies in regard thereto, and the defendants deny that the ownership and control of stockyards by others than the parent companies, or one of their members, or controlling heads, was discouraged and opposed, as charged in said bill of complaint, but on the contrary, in so far as the defendant parent corporation, Wilson & Co. (Inc.), or any of its subsidiary companies who are defendants in this cause are concerned, they and each of them allege the facts to be that, as heretofore set forth, they have never acquired any stock or other interest in any of the stockyards referred to in said bill of complaint, nor have they refrained from purchasing any such interest, because same was owned or controlled, either wholly or partially, by any other parent company defendant in this cause; nor have they, or either of them, entered into any contract, agreement, or understanding with any other defendant in this cause, the purpose of which was to effect

any of the matters or things alleged in said bill of complaint, but specifically deny each and every allegation therein contained in relation thereto.

And the individual defendants, for whom answer is herein made, and each of them, except Thomas E. Wilson, further specifically deny that they, or either of them, own any interest, directly or indirectly, in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper, as described in the bill of complaint, and deny each and every allegation in the bill of complaint in relation to stockyards, and further deny that they now have or exercise or heretofore have had or exercised any voice or power, or now have or have had any agreement or understanding, directly or indirectly, express or implied, to do or bring about any of the matters or things alleged in the bill of complaint.

And further answering, the defendant, Thomas E. Wilson, says that he is the owner of a small amount of stock in a few public stockyard market companies, purchased by him as an investment and not for any of the purposes set forth in said bill of complaint.

And the defendant, Thomas E. Wilson, further answering, denies that either he, Wilson & Co. (Inc.), or any of its subsidiaries or any of the other individuals named in said bill of complaint as
87 Wilson defendants, is or has ever been in any combination, agreement, or understanding with any of the other defendants mentioned in said bill of complaint, or any other corporation, firm, or association to accomplish or effect any of the things or conditions set forth in said bill of complaint in relation to any stockyards or stockyard terminal railroads or market papers referred to therein.

And these defendants for whom answer is herein made, further answering, severally say that if it be true, as alleged in the bill of complaint, that the public stockyard market companies directly or indirectly own or control the available land surrounding the yards owned by such companies, it was no doubt acquired at the time said yards were established to provide necessary land for the future growth and expansion of its business and the extension of said yards.

The value of stockyards as an investment is dependent upon the number of heads of livestock handled through such yards. It is therefore to the interest of such stockyard company to encourage the establishment at such yards of as many packing plants and other enterprises essential to the maintenance of a market as can be induced to locate at such yards. The greater the number of such plants, the larger the requirements of such a market; and if it be true that new packing companies can secure desirable packing sites only from said stockyard companies or from the companies owned or controlled by said stockyard companies, or their principal stockyards, or that said stockyard companies are in a position to determine what packing companies and how many plants should be established at the various stockyards, as charged in the bill of complaint, these defendants aver that said facts do not constitute a violation of any law of the land; and, so far as they are informed and believe, no

packing company or other related enterprise has ever been denied the privilege of securing a location for its plant at any of such stockyards.

These defendants, further answering, aver that, according to their observation, information, and belief, the ownership by packing companies of an interest in public stockyard market companies has been to the advantage of such stockyard companies.

The acquisition of such interests has usually been followed by improved management, better facilities, new extensions, and greater efficiency in the handling of livestock at and through the yards. The packer had the greatest possible interest in maintaining a market for his raw material, to popularize it with the producer as far as it is possible to do so, in order that a continuous supply of livestock will be available for his requirements. Much of the trouble suffered by the packing industry has grown out of the impression and suspicion existing in the minds of some of the producers of livestock that the ownership or control of stockyards by packing companies in some mysterious manner gives to the packer a power to influence and manipulate the prices paid for livestock. There was never a grosser misconception or more erroneous assumption wholly unsupported by facts.

88 These defendants, further answering, severally aver that for sanitary reasons, and to comply with the laws of the country and regulations of Government bureaus, it is essential to remove the carcasses of dead animals from the premises promptly; and in order to have some one ready at all times to perform that service and properly equipped to do so, the defendants are informed that it is customary to enter into contract with some responsible concern to perform that service. These defendants are informed and believe that the number of such animals dying either in transit or after arrival is not sufficiently large to support a number of plants for disposing of same, and that the stockyard companies do not determine or fix the price which shall be paid for such dead animals.

These defendants, for whom answer is herein made, further answering severally deny that they or either of them is or has been a party to any arrangement, understanding, or agreement with any of the other defendants herein or with any public stockyard market company, or with any other person, firm, or corporation whatsoever, whereby any such stockyard company was induced or was attempted to be influenced to discriminate against certain commission men or traders in the leasing office space, or in the allotment of pens or other accommodations as alleged in the bill of complaint. That some offices and some pens are more advantageously located than others is true of any structure, but unfortunately they can only be occupied by one tenant at a time—and these defendants for whom answer is made herein, further answering upon information and belief severally deny that there is any discrimination against any packer or independent buyer by any stockyards terminal railway operating at any stockyards described in the bill of complaint; or that the control of stockyards and facilities appertaining to stockyards is used by defendants own-

ing or controlling them as a means of favoritism in dealing with commissioned men; or that such control of stockyards and facilities appertaining thereto has resulted in any discrimination by the defendants owning or controlling them in favor of banks, cattle loan institutions, rendering plants and concern supplying food for livestock which are located at or near to any of the stockyards described in the bill of complaint; or that the control of stockyards and facilities appertaining thereto is or has been used by the defendants, or any of them, as a means to prevent the establishment of new packing plants or to hamper the growth of those in existence; or that the control of stockyards or facilities appertaining thereto is, or has been, used by the Wilson defendants as a means to prevent the development and limit the number of new markets or to centralize or restrict business to the stockyards so controlled; or that the control of stockyards and facilities appertaining thereto affords peculiar and exclusive access by the defendants, or any of them, to information concerning receipts and sales of livestock, its disposition and the dissemination of information to the producer. But, on the contrary, these defendants severally aver that according to their observations, information, and belief the service afforded by such stockyard companies is furnished without favoritism toward or discrimination against any shipper, dealer, packer, buyer, commission man, or any other person, firm, or corporation transacting business at any or all of such stockyards.

89

Branch houses

Third. These defendants further answering severally aver that Wilson & Co. (Inc.) and its subsidiaries operate approximately 120 branch houses in the United States, that said branch houses are established for the purpose of facilitating the sale and distribution of the products manufactured, produced, and sold by Wilson & Co. (Inc.) and its subsidiaries, and are not mere storage warehouses. These defendants further aver that the branch houses of Wilson & Co. (Inc.) and its subsidiaries are operated in actual and open competition with the branch houses of any and all the other defendants in this cause and in competition with all other persons, firms, and corporations engaged in a similar business.

Route cars and auto trucks

Fourth. These defendants, for whom answer is herein made, further answering severally aver that the establishment by Wilson & Co. (Inc.) and its subsidiaries in their business of the system of distributing fresh meats, dairy and poultry products through refrigerator cars and auto trucks running on a fixed schedule has been an economic advantage to the country. It enables the smallest towns along such routes to receive regular supplies of food necessities and provides the producers with a much enlarged market for the consumption of their products. But these defendants deny the inference that there

is anything unlawful in their use as a means of distribution. The use of refrigerator cars for such purposes is recognized, approved, and regulated by the Interstate Commerce Commission. All products so handled pay the same freight rates and are governed by the same rules and regulations as apply to or affect all other shippers handling the same commodities.

Cold-storage warehouses

Fifth. These defendants further aver that the cold-storage warehouses described in the bill of complaint are necessary adjuncts and facilities for the preparation, conservation, and distribution of the food products stored therein, one of the objects of such storage being to conserve the surplus supplies of seasons of heavy or excess production for use during seasons of light or underproduction, thereby furnishing a more uniform market for producers and supplying such products at lower prices to consumers during times of natural scarcity.

Parent companies' acquisition of stockyards terminal railroads and market papers and the power given by such control

Sixth. These defendants for whom answer is herein made, further answering, severally deny, as they have heretofore done, that the defendant Wilson & Co. (Inc.), or its subsidiaries, have ac-
90 quired any interest in or control over any public stockyard market companies, stockyard terminal railroads, or stockyard market newspapers, and, consequently, each and all of the allegations contained in said bill of complaint, dealing with the power of such ownership or control and the manner in which it is alleged to be exercised, can have no application to the defendant Wilson & Co. (Inc.), or any of its subsidiaries, and, therefore, these defendants, and each of them, further answering, severally deny that Wilson & Co. (Inc.) and its subsidiaries, acting in concert or otherwise with any or all of the defendants named in said bill of complaint, have employed any power or privilege possessed by them through any such agencies to effect or discourage or suppress the establishment of independent packing companies or of dwarfing the growth of such independent packing companies as might then be in existence, as charged in said bill of complaint, and the said defendants further deny that the defendant Wilson & Co. (Inc.), parent company, or its subsidiaries, either alone or in concert with any or all of the other defendants named in said bill of complaint, have in any manner attempted to monopolize the meat industry of the country or artificially or otherwise control the ultimate price which the consumer pays for meat or meat products, as charged in the bill of complaint.

Contracts in restraint of trade

Seventh. And these defendants, for whom answer is herein made, and each of them, further answering, severally deny that Wilson &

Co. (Inc.), the parent company, has entered into any unlawful contract or combination with any other defendant named in said bill of complaint to restrain trade and commmerce and to artificially or otherwise prevent between themselves competition in prices for which meat and meat products are sold.

These defendants further severally deny the existence of any contract, agreement, arrangement, understanding, or practice by which purchases of livestock by Wilson & Co. (Inc.), the parent company, has been gauged, divided, or distributed between Wilson & Co. (Inc.), the parent company, and any other defendant or defendants named in said bill of complaint. These defendants further deny that any purchases of livestock by Wilson & Co. (Inc.), the parent company, have been made in accordance with or pursuant to any agreement, understanding, or arrangement with any other defendant in regard thereto; or that the diverse percentages of the purchases by the respective defendant parent companies of livestock at the various stockyards were agreed upon, and further deny that any understanding, agreement, or arrangement was had or made that certain of the parent companies should buy in certain stockyards or should refrain from buying at certain stockyards, as charged in the bill of complaint.

These defendants severally deny that any arrangement, agreement, or understanding was entered into with any other person, firm, or corporation designated in said bill of complaint as "independents" engaged in the meat-packing business, whereby purchasing
91 between Wilson & Co. (Inc.) and its subsidiaries and such so-called "independents" was effected upon a percentage basis, as charged in the bill of complaint. And these defendants severally say that they, or either of them, to the knowledge or belief of the others, or other of them, do not know whether the percentage of purchase of livestock by the parent companies, other than the defendant herein, for whom answer is made, were uniform and approximately constant, as alleged in said bill of complaint, but on the contrary, from the best of their knowledge and belief, the defendants for whom answer is herein made aver that the purchases of livestock of the several defendant parent companies have not been uniform or constant in respect of any ratio of percentage, to the other defendants in this cause, or uniform as to the purchases made by the so-called "independents," and the defendants for whom answer is herein made expressly deny that the percentages of purchases of livestock by Wilson & Co. (Inc.) have been uniform in any week, month, or year, as compared to the purchases of others, and the defendants severally aver that any and all of the purchases of livestock made by the said Wilson & Co. (Inc.) and its subsidiaries were not the result of and were not controlled or governed by any agreement, understanding, combination, or conspiracy by and between the parent companies or any of their officers or employees, or with any other person, firm, or corporation whatsoever, but that they were the result of the trade demand of said Wilson & Co. (Inc.) and its subsidiaries and the active competition existing between Wilson & Co. (Inc.) and its

subsidiaries and each and all of the other defendants named in the said bill of complaint.

And said defendants further answering severally aver that each and every allegation in said bill of complaint relating to the purchase of livestock on a percentage basis are founded upon misconceptions and are in fact untrue; that the defendants, Wilson & Co. (Inc.) and its subsidiaries, are ever alert to maintain the volume of their business and to increase it wherever and whenever possible, without regard to the policy of any other company engaged in a similar business and in competition with any and every such company. The meat food products of Wilson & Co. (Inc.) and its subsidiaries are distributed to the public through the medium of retail dealers, Wilson & Co. (Inc.), and its subsidiaries have their regular line of customers among such dealers and it is the business policy of Wilson & Co. (Inc.) and its subsidiaries to supply as far as possible all the trade demands of its customers and to procure new customers wherever and whenever possible. Wilson & Co. (Inc.) and its subsidiaries purchase in the open markets of the country a sufficient number of livestock to fill their trade requirements without regard to how it may figure out in comparison with the purchases of any other person, firm, or corporation. If the demands of their customers increase the purchases of livestock are increased accordingly, and if there is a decrease in the demand, likewise purchases are decreased. The law of supply and demand govern the aggregate purchases of livestock by Wilson & Co. (Inc.) and its subsidiaries, and from their knowledge of the business
92 and their belief based upon observations the ratio of the volume of business transacted by the several defendants in this cause is not more uniform than will be found to exist between competitors in any other basic industry in this country.

And these defendants for whom answer is herein made, further answering, severally aver that Wilson & Co. (Inc.), and its subsidiaries annually purchase and slaughter approximately 3,000,000 head of hogs, 1,000,000 head of cattle, and 1,000,000 head of lambs. In order to increase their annual purchase to the extent of 1 per cent it would mean that retail dealers handling the products of Wilson & Co. (Inc.), and its subsidiaries would be required to secure approximately 10,000 new customers who would exclusively purchase the Wilson brand of commodities for the entire year. It would mean the additional purchase and slaughter by Wilson & Co. (Inc.) and its subsidiaries of approximately 30,000 head of hogs, 10,000 additional cattle, and 10,000 lambs, representing an outlay of approximately $2,500,000 for the raw materials. Therefore, while the variations in the percentage of purchase of livestock from year to year may appear to be very small, yet the smallest fraction of an increase or decrease actually represents a very considerable number of livestock and quite a volume of business in money values. It is and has been the purpose of Wilson & Co. (Inc.) and its subsidiaries

o use all lawful and legal means at their disposal to maintain their resent volume of business and to increase it as much as possible.

These defendants, further answering, severally deny that means ere adopted by any of the defendants named in the bill of com-laint whereby and by the parent companies' control over stockyards, ales to outsiders or so-called independents were controlled in any anner by Wilson & Co. (Inc.) or any of its subsidiaries, as charged n the bill of complaint; and these defendants deny that such control s the parent companies, other than Wilson & Co. (Inc.), have exer-ised over stockyards, stockyards loan institutions, stockyards ter-inal railways, and other facilities incidental to the operation of uch stockyards has discouraged opposition or competition by com-ission men or by so-called independent packers, as charged in the ill of complaint. As heretofore alleged, the defendant parent com-any, Wilson & Co. (Inc.), nor any of its subsidiaries own or con-ol any interest in said stockyards, terminal railroads or the instru-entalities by means of which any of such results were accomplished, f indeed any such conditions were created as alleged, all of which hese defendants deny.

Control of substitute foods

Eighth. These defendants, further answering, severally deny that hey have eliminated competition in meat products, as charged in the ill of complaint.

Wilson & Co. (Inc.) and its subsidiaries are in active, open, free, nd unrestricted competition with over 1,000 persons, firms, and cor-orations engaged in the business of slaughtering livestock in this country, more than 300 of which are engaged in interstate com-merce. Moreover, the meat products of said Wilson & Co. (Inc.) and its subsidiaries are sold in active competition with he products of local butchers in all sections of the country. It is bsurd to charge that the defendants in this cause have eliminated ompetition in meat products when all of said defendants together o not slaughter in excess of 35 per cent of the cattle slaughtered for ood in this country.

These defendants further deny that Wilson & Co. (Inc.) and its ubsidiaries set about to control the Nation's sale of fish, vegetables, ither fresh or canned, fruits, cereals, milk, butter, cheese, eggs, nd other foods ordinarily handled by wholesale grocers or produce ealers, as charged in the bill of complaint, and these defendants eny that their method of handling any such commodities has or ad the effect of eliminating competition in the sale or of fixing the rice of said products, but, on the contrary, they, and each of them, ver that, according to their knowledge, information, and belief, the otal volume of business transacted by each, any, and all of the de-endants in any of the commodities mentioned in this paragraph was nly a small fraction of the total volume of business transacted in

the United States in the said commodities; that the total volume of the business handled by the defendants in this cause in all of the so-called grocery lines approximates in the aggregate about $100,000,000, whereas the defendants are informed and believe and so represent that the total volume of such business transacted by competitors other than the defendants herein, including the wholesale grocers, aggregates more than $4,000,000,000 annually.

These defendants further aver that the business in such lines transacted by each of the parent companies and their subsidiaries is separate, distinct, and independent from the business transacted by any other parent company or its subsidiaries, and said defendants deny that there is any contract, agreement, understanding, or concert of action by and between Wilson & Co. (Inc.) and its subsidiaries and any of the defendant parent companies in this cause whereby they, or any of them, have attempted to monopolize commerce in any of the products above mentioned, and further deny that any acts of Wilson & Co. (Inc.) and its subsidiaries have resulted in the defendants, or any of them, obtaining complete control of any food products, as charged in the bill of complaint, or any such control as would in the remotest degree approximate a monopoly in commerce in any of such food products; and these defendants further deny that great numbers of competitors have finally abandoned and quit their business or sold out to the defendant parent companies or their subsidiaries, as charged in the bill of complaint, but, on the contrary the defendants aver that, according to their information and belief, a few such competitors for sufficient reasons of their own may have retired from business, but the number of competitors in such lines of business has increased, and the volume of such business transacted by them has constantly grown and is now greater than at any previous *time* in the history of this country.

These defendants emphatically deny that unless prevented by a decree of this court the defendants will within the compass of
94 a few years control the quantity and price of each article of food found on the American table, as charged in the bill of complaint.

And as a further evidence of the lack of facts to support the theories of said bill of complaint these defendants aver that long prior to the filing of the bill of complaint in this cause and long prior to the time that the Department of Justice took up for consideration the issues involved in its complaint Wilson & Co. (Inc.) and its subsidiaries determined of their won volition to retire from the business of manufacturing, transporting, and distributing through their distributive system many of the products theretofore handled by them, such as canned goods and groceries. To this end they have long since disposed of all their manufacturing plants whereby fish and vegetable foods were manufactured, and steps are being taken for a final discontinuance of their distribution. This decision was not taken because of any existing contracts, agreements, or understandings in violation of law or of sound business ethics.

Wilson & Co. (Inc.) and its subsidiaries deny any and all allegations in said bill of complaint that its entry into or the handling of any of the so-called unrelated lines of food or so-called substitute food products was in any manner a violation of any law of the land or of sound economics or was against the interest of the producing or consuming elements of the population of this country.

Financial growth, present net worth, and volume of business

Ninth. The defendants for whom answer is herein made further severally say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know and have never been informed, save by the bill of complaint and through the public press, of the facts in relation to the financial growth of the parent companies other than Wilson & Co. (Inc.), the parent company, for whom answer is herein made, or in regard to the payment of cash dividends by any of said parent companies, other than Wilson & Co. (Inc.), and therefore neither admit nor deny the averments contained in the bill of complaint in regard to the financial growth of said parent companies; but answering specifically for Wilson & Co. (Inc.), they aver that its financial growth has been the result of sound business management, in conformity with the laws of the land, and not a result of any combination, agreement, or understanding with any other person, firm, or corporation that gave it the slightest advantage over any of its competitors or influenced it to act in concert with any other person, firm, or corporation.

Number of controlled companies

Tenth. These defendants further severally say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know the number of corporations and concerns, including trade names, which the parent companies, or the individual defendants and their families maintain and control, as set 95 forth in the bill of complaint, further and beyond those relating to said Wilson & Co. (Inc.) (parent corporation defendant) herein, and therefore neither admit nor deny the averments contained in the bill of complaint in regard to the number of corporations and concerns, including trade names, which such other parent companies, or individual defendants and their families maintain and control, but answering specifically for Wilson & Co. (Inc.), and the other defendants for whom answer is herein made, these defendants deny that any corporation or concern or trade name controlled by it or them in any manner violates any law of the land.

Control of various industries

Eleventh. These defendants deny that if the growth of the parent companies and their subsidiaries is permitted to continue unchecked

they will within a few years completely control the various industries in which said defendants are engaged.

Extent of control in the substitute foods and unrelated commodities

Twelfth. These defendants for whom answer is herein made further severally say that they, or any or either of them, to the knowledge or belief of the others, or other of them, do not know and have never been informed, save by the bill of complaint and through the public press, as to the volume of business transacted by Armour & Company in 1916, and therefore neither admit nor deny the averments contained in the bill of complaint in respect thereof.

Thirteenth. These defendants for whom answer is herein made further severally deny that Wilson & Co. (Inc.) and its subsidiaries have any purpose or intention of securing control of the market for the so-called substitute meat foods, as alleged in the bill of complaint; but on the contrary the defendants herein aver that it is impossible that any or all of the defendants, even if they should act together (which they do not), in pursuance of a common purpose and design to attempt or secure control of the market for meat or meat substitute foods, as alleged in the bill of complaint, that, so long as the raw material entering into the manufacture of meat and meat food products is in the hands of millions of producers and is sold in the open markets of the country in free competition such as actually exists in the sale of said raw material, no man or group of men may secure a monopoly thereof.

These defendants further aver that there are over 1,000 persons, firms, and corporations in the United States engaged in business in active competition with Wilson & Co. (Inc.) and its subsidiaries and with the other parent corporations and their subsidiaries named as defendants in said bill of complaint, of which more than 300 are engaged in interstate and foreign commerce. All of said other concerns purchase their raw materials in the open market in competition with the defendants herein and sell their products in
96 the markets of the world in competition with each and all of the said defendants, each of whom is in open active competition with the other.

Individual defendants

Fourteenth. The individual defendants named in said bill of complaint as Wilson defendants, answering further for themselves and each for himself, deny all and singular the allegations in said bill of complaint, wherein it is charged directly or indirectly, inferentially or otherwise, that they, or either of them, jointly or severally, have entered into any contract, agreement, or understanding with any other person, firm, or corporation, named as a defendant in said bill of complaint, to establish or create a monopoly or any restriction or restrictions in trade or commerce between the States or foreign nations, or to do any of the acts or things alleged in said bill of complaint as violating the laws of the land.

Fifteenth. Said individual defendants aver that they are the managing officers of Wilson & Co. (Inc.) and its subsidiaries, named as defendants herein; that it is and has been the constant aim and purpose of each of said individual defendants to conduct the business of said corporation, defendants for whom answer is herein made, in strict conformity with the laws of the land and in consonance with the highest commercial ethics and ideals; that the bill of complaint in this cause follows closely the report of a Government bureau, made after an ex parte investigation, in which the defendants herein were not given an opportunity to testify or explain any of the matters or things set forth in said report.

The individual defendants further answering severally aver that the packing-house industry is but the manufacturing and distributing agency between the producer, on the one hand, and the consuming public, on the other; that when the prices of livestock are high and profitable to the producer, the consumers complain of the high cost of the products, and, on the other hand, when they are low, the producer is dissatisfied, and out of this unfortunate situation has grown the basis for the allegations in the bill of complaint which are grounded upon misconceptions, inaccuracies, and unwarranted deductions, having no foundation in fact.

Conclusion

Sixteenth. These defendants for whom answer is herein made, and each of them further answering, severally deny all, and all manner of unlawful combination and conspiracy wherewith they are by the said bill of complaint charged, or that the complainant is entitled to the relief, or any part thereof, in said bill of complaint demanded, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

Respectfully submitted.

Wilson & Co. (Inc.); Wilson & Co.; Wilson & Co. (Inc.), of California; Wilson & Co. (Inc.), of Louisiana; Wilson & Co. (Inc.), of Oklahoma; South
97 Dakota Provision Company; Gotham Hotel Supply Company (Inc.); Standard Beef Company; Stiefel O'Mara Company (Inc.); Drexel Packing Co.; Albert Lea Packing Company (Inc.); Mississippi Packing Company (Inc.); Morton-Gregson Company; Paul O. Reymann Company; Standard Provision Company; Central Products Corporation; Thomas E. Wilson; Arthur Lowenstein; Jacob Moog; Vonce De Leon Skipworth; Arthur L. Smith; James A. Hamilton; George D. Hopkins; Adolph E. Peterson; George H. Cowan; William C. Buethe; Carl F. Burrell; James C. Good,

By JEWEL P. LIGHTFOOT,
Solicitor.

In Supreme Court of the District of Columbia

Answer of Cudahy defendants

Filed February 27, 1920

[Title omitted.]

Now come the defendants in the above-entitled cause (herein called "Cudahy defendants"), viz:

1. The Cudahy Packing Company, in said bill of complaint designated as a "parent company."

2. The Cudahy Packing Company of Nebraska, the Cudahy Packing Company of Louisiana, Limited, the Cudahy Packing Company of Alabama, Nagle Packing Company, in said bill of complaint designated as "defendant subsidiaries."

3. Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples, designated in said bill of complaint as "individual defendants"; all by George T. Buckingham and Thomas Creigh, their solicitors, and for answer to the bill of complaint in the above-entitled cause, or to so much thereof as these defendants are by counsel advised is necessary or material to be by him or any of them answered, say:

Cudahy defendants admit that said The Cudahy Packing Company is a corporation organized under the laws of the State of Maine. They aver, however, that said corporation was organized in October 1915, and began business on the first day of November, 1915,
98 and that said corporation prior to that date was never engaged in any business or activity.

They aver that individual defendants, Edward A. Cudahy, sr., since the organization of said The Cudahy Packing Company has been its president, and Edward A. Cudahy, jr., its vice president, and that the other individual defendants, since the organization of said parent company, have been connected with it as officers or employees.

Cudahy defendants deny that they or any of them have now or have ever had any stock ownership or other interest in Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company, or that either of said companies is or has ever been a subsidiary of any of the Cudahy defendants.

Court's jurisdiction

Cudahy defendants admit, for the purposes of this action, that said parent company since its organization, November 1, 1915, has been and now is engaged in interstate and foreign commerce and that it transacts the kinds of business as alleged under (a), (b), (c), and (d) of paragraph 1 under the above head, and also to a limited extent as alleged under (e) and (f) of said paragraph 1; and as to

said latter limited number of items, none of them are unrelated to the general business of parent company but are all a natural outgrowth of same and economically related thereto.

Cudahy defendants deny that they or any of them by means of any lawful means or method, or otherwise, attempted to dominate, control, or monopolize a very great portion or any portion of the food supply of the Nation; or that they have, in conjunction with any person or corporation whatever, built up by any means, or attempted so to do, any unlawful monopoly in, or any control over, divers and sundry products mentioned in said bill, as alleged in said bill.

Cudahy defendants deny that by any methods whatever any of them have attempted or are attempting to increase or extend any monopoly, or that they are or any of them have been enabled in any manner, artificial or otherwise, to control the supply or price of the food supplies of the Nation, as alleged in said bill.

Object to be attained

Cudahy defendants deny that any monopoly exists or has been attempted by any of them, as alleged under this head.

The nature of the business and method by which it is conducted

Cudahy defendants admit that the allegations of the bill of complaint under this head are substantially true and correct, except that they aver that the "invention of refrigerator cars" was only one of the elements which caused said parent company to widely extend its market and to made the same nation-wide, and they allege that many other elements of natural growth and legitimate business development entered into and caused such expansion of business.

99

Defendants further aver that the business established by its predecessor corporation was begun in 1887, and that while in its inception this predecessor devoted itself exclusively to the slaughter of livestock, it from the very beginning in addition to dressing the carcass and selling the dressed meat to retail butchers, also engaged in the business of preparing various by-products, such as hides, fertilizer, bones, hair, etc., and that more than 30 years ago said predecessor began its operations and developed its business in other kindred lines in the manufacture and dealings in other articles both edible and inedible which were not derived from livestock.

The stockyards

Cudahy defendants admit that the allegations in the bill of complaint under this head are substantially true and correct in so far as they relate to the stockyards being a public market place, but they deny that the stockyards afford the cattle raiser the opportunity to

dispose of his livestock for an immediate cash price. They aver that the stockyards provide facilities for attending to the handling of the livestock itself, and is a place where commission men, packers, feeders, and all other dealers have common access to the livestock for the purpose of independently buying, trading, selling, and inspecting it, but that all of these activities are entirely independent of any relation to the stockyards as such, and that in fact it is largely the facilities and financial resources of the packers and other dealers which provide to the cattle raiser the opportunity to dispose of livestock as alleged.

Defendants further deny that the stockyards, by reason of its dominating position, controls the conveniences and facilities associated with it, as alleged in said bill of complaint.

Conveniences and facilities controlled by stockyards

Cudahy defendants aver that said parent company owns packing houses in or near, and does business at, the stockyards following, and at none other, to wit:

Sioux City, Iowa; Omaha, Nebr.; Kansas City, Kans.-Mo.; Wichita, Kans.; and North Salt Lake City, Utah.

With reference to these stockyards (and only as to these), Cudahy defendants, as to the subject matter of the respective subheads, under the above general head, say:

Packing-house sites: That they deny the allegations of the bill of complaint.

Sites for stockyards banks and cattle loan companies: That they deny the allegations of the bill of complaint.

Rendering plants: That they deny the allegations of the bill of complaint.

100 Commission men's office space: That they admit the allegations of the bill of complaint.

Terminal railways: That they deny the allegations of the bill of complaint.

Market papers and journals: That they admit the allegations of the bill of complaint.

That they deny that control of said stockyards or of any facilities appertaining to said stockyards carried with it any of the profits, means of favoritism, means to prevent the establishment of new packing plants, means to prevent the development or to limit the number of new markets, or peculiar and exclusive access to information, and that they deny all allegations as alleged in paragraphs (a), (b), (c), (d), and (e) under the above general head.

That they further expressly deny that any said stockyards ever has—

(a) Derived any profit from the meat industry "levied upon it" as alleged in paragraph (a); or

(b) Exercised any favoritism in dealing with commission men or granted any monopolies, as alleged in paragraph (b); or

(c) By any means or method prevented the establishment of new packing plants or hampered the growth of those in existence, as alleged in paragraph (c); or

(d) Prevented the development or limited the number of new markets or centralized or restricted stockyards business, as alleged in said paragraph (d); or

(e) Possessed or used any peculiar or exclusive access to information, as alleged in paragraph (e).

Branch houses, route cars, auto trucks, and cold-storage warehouses

Branch houses: Cudahy defendants admit the allegations of the bill of complaint under this subhead to be substantially true and correct, except that they have no direct knowledge as to the number of branch houses maintained in the United States by all interstate slaughterers and therefore neither admit nor deny the allegations concerning numbers.

Route cars: Cudahy defendants admit that the allegations of the bill of complaint under this subhead are substantially accurate and correct, except that they have no direct knowledge as to the total number of route cars operated by all parent companies, or the percentage which those bear to the total operated in the entire packing industry, or the number of towns reached thereby, or the number of States in which the same operate, and they therefore neither admit nor deny the allegations concerning numbers and percentage.

Auto trucks: Cudahy defendants neither admit nor deny the allegations under this subhead, but aver that none of them have ever operated any auto trucks over any route under the system or otherwise, as alleged under said subhead.

101 Cold-storage warehouses: Cudahy defendants deny the allegations under this subhead.

The parent companies' acquisition of above-described facilities and their purpose in doing so

Cudahy defendants deny that they, or any of them, ever set about the acquisition of stockyards and appurtenances and privileges incidental thereto in the manner or with the purposes as alleged under said head.

They deny that such was done in any instance, or that it was done by concert of action or pursuant to a common understanding between any of the Cudahy defendants and any of the defendants in this bill of complaint other than Cudahy defendants.

They deny that the acquisition of control of any stockyards by any defendant to the bill of complaint other than Cudahy defendants was acquiesced in by any of Cudahy defendants, or that any defendant other than Cudahy defendants ever acquiesced in the acquisition of any interest in any stockyards ever acquired by any of Cudahy defendants, or that any of Cudahy defendants ever dis-

couraged or opposed the acquisition by any other defendant of any interest in any stockyards or that any defendants other than Cudahy defendants ever opposed or discouraged the acquisition by Cudahy defendants, or any of them, of any stockyards property or any interest therein; but, on the contrary, Cudahy defendants aver that none of them have any interest whatever in any stockyards company or property, except only as follows, to wit:

Holdings in stockyards companies Jan. 30, 1920

	Par value	Number of shares			Total
		C. P. Co.	E. A. C.	E. A. C., Jr.	
Sioux City Stockyards Co. (preferred)	$100.00	1,117	.....	.....	1,117
Wichita Union Stockyards Co. (common)	100.00	8,160	119	.....	8,279
Salt Lake Union Stockyards Co. (common)	100.00	3,620	.....	.....	3,620
Union Stock Yards Co. of Omaha (Ltd.) (common)	100.00	.....	31	.....	31
Kansas City Stockyards Co. (common)	100.00	.....	500	.....	500

That in said Witchita property and in said Salt Lake property no defendant, other than Cudahy defendants, have any stock ownership or interest whatever; that all of said interests so acquired by any of the Cudahy defendants were acquired for purely legitimate business purposes, as investments and for value received.

They deny as to said stockyard companies in which any of them are interested that, in pursuance of a common purpose, plan, and design, or otherwise, outside investors and independent packers have
102 been forced out as dominating factors in the ownership and management of said stockyards or that such have been replaced by any defendant or representatives thereof, as alleged under the above head.

Cudahy defendants deny that by the various means set forth in said bill of complaint, or otherwise, the Cudahy Packing Company has, directly or indirectly, obtained control of any stockyard whatever, or that it has any interest in any except only as above set forth.

Cudahy defendants deny that by reason of their control of any stockyard, or otherwise, they have granted exclusive privileges such as the right to purchase dead animals, furnish supplies and facilities, locate cattle banks and cattle loan companies, or otherwise, to concerns and corporations in which they, or some of them, are stockholders, as alleged under this head. On the contrary, they aver that all of their acts as owners of any interest in said two stockyards, in which they have any substantial interest, have been in complete harmony with the holders of the majority of the stock in such stockyards, company, and that Cudahy defendants, separately or collectively, do not own a majority of the stock in any said stockyards company, and that any or all of Cudahy defendants, in connection with any other defendants, do not in any case own a majority interest in any said stockyard company, and that none of Cudahy defend-

ants have at any time ever exercised the aforesaid exclusive rights and privileges alleged under this head.

Cudahy defendants deny that any of the acts alleged under this head have been done with the intent and purpose alleged in said bill of complaint, or have had the effect therein alleged, or that the Cudahy Packing Company has been enabled thereby to obtain vast profits, or any profit, from the management of any said stockyard or from the granting of any said exclusive privileges relating thereto, or that said the Cudahy Packing Company has realized vast profits or any profits which were not disclosed in its profits on its books.

Cudahy defendants deny the Cudahy Packing Company has attempted to monopolize the meat industry of the country, or to artificially control the ultimate price which the consumer pays for meat and meat products, either by its own acts or in conjunction with any other defendant, as alleged under this head, or otherwise.

Contracts in restraint of trade

Cudahy defendants deny that the Cudahy Packing Company has ever entered into any unlawful contract or combination to restrain trade and commerce, or to artificially prevent between it and other defendant parent companies competition in the prices for which meat and meat products are sold as alleged under this head.

Cudahy defendants further deny that any contract or agreement described in said bill of complaint as "the percentage purchase agreement," or anything similar thereto, exists or was ever entered into or participated in by the Cudahy Packing Company parent corporation, or that it ever entered into or participated in any contract or agreement with anyone which had as its ultimate object the
103 elimination of competition in the purchase of livestock or in the sale of dressed meats, as alleged under this head or otherwise.

They deny that it is a "well-established commercial principle" that limitation on the source of supply, and consequent limitation on volume of business, remove all incentive to reduce prices, or necessarily tend to do so, as alleged under this head.

With reference to the purchase of livestock, they deny that the Cudahy Packing Company agreed with said parent companies, or with anyone, or thereafter recognized between it and them certain percentages or proportions of purchase to which they deemed that each was entitled, and they deny that said the Cudahy Packing Company thereafter gauged its purchases in such manner that its annual purchases approximated actually or substantially percentages agreed upon, as alleged under this head.

They deny that as a means of perfecting this arrangement, or otherwise, divers percentages varying at different stockyards were ever agreed upon by or for the Cudahy Packing Company, or that understandings were had by or for it that certain parent companies should buy in certain yards, or should refrain from buying in certain yards, or that in order to prevent such plans from being disar-

ranged by outsiders, or otherwise, agreements were made by the Cudahy Packing Company with "outsiders" by which its purchases were conducted on any agreed percentage basis, as alleged under this head.

They deny that by virtue of its control over any stockyards, or by any other method, purchases by outsiders or independents were ever controlled by the Cudahy Packing Company or by any agreement whatever made by or for it, or that it, by any control or by any agreement, ever discouraged any opposition by commission men or independent packers, as alleged under this head.

Cudahy defendants aver the fact to be that the Cudahy Packing Company and its subsidiaries, operates at various points in the United States a total of 105 branch houses and, in addition thereto, a large export and other business; that these branch houses are equipped with refrigeration and other facilities; that it employs therein a large number of salesmen; that it sells and distributes its products therefrom, within the territory naturally and commercially adjacent and tributary to each; that it makes every effort within its power, and by the best business activity and efficiency of which it is capable, to sell as much as it can; that the great bulk of said products originate at the said packing houses of the Cudahy Packing Company parent company; that at its packing houses, and at its branch houses and other said distribution facilities it has refrigeration and storage space in which it keeps products in the brief period between manufacture and sale; that naturally and logically the parent company purchases and slaughters at its packing plants such number of animals and such number only as it can reasonably expect and anticipate will yield the quantity of products which can be marketed through its said branch houses and other facilities; that the amount of products which it can sell necessarily determines and limits the number
104 of animals which it buys and slaughters; that it has never entered into any agreement and could not in the nature of the economic situation enter into any agreement which would either limit or expand the extent of its purchases, the latter being determined by the amount of products which it is able (a) to manufacture at its plants, (b) to keep and to refrigerate pending sale, and (c) to handle and sell through its branch houses, car routes, foreign trade outlets and other sale facilities.

That all other packers handling the same products and including the other so-called parent companies are similarly situated with respect to marketing their said products through their branch houses and otherwise; that all branch houses and sales outlets are in keen and active competition with each other at various market and consuming points and the distributing centers; that the necessary result of this trade situation and the competition existing at said centers, is that each of the said packers is able to sell and distribute from one month to another, and annually, a similar proportion of products; and the natural result of this is that the purchase of livestock by the several parent companies maintain throughout monthly and

yearly periods, substantially a similar percentage relation to each other; that this condition has always obtained in the packing business, and, in the opinion of the Cudahy defendants, always will obtain; that it is brought about by competition, and by the economic situation, and by the natural laws of trade and commerce, and not by any agreement or combination; that the aggregate purchases of livestock by the parent companies, and by the packing industry as a whole, is very great, amounting annually to millions of animals. In 1916 this latter total, according to the Federal Trade Commission, was approximately 70,000,000 animals; that there are daily, weekly, and monthly fluctuations in the relative number of its purchases by the various defendant parent companies; that these variations are considerable and substantial, amounting to hundreds of thousands of dollars; there are also great variations in the kind, character, quality, weight, and value of the respective animals purchased. When, however, these very great numbers are compared to each other, and the comparison expressed in percentages, it is inevitable that substantially similar percentages will appear from year to year, although the actual variations, as among the several packers, are in themselves enormous.

Control of substitute foods

These defendants deny that competition ever has been eliminated in meat products, as alleged under this head.

They deny that for the purpose of preventing the public from turning to meat substitutes, or for any other purpose they, or any of them, individually or collectively, or with any or all defendants, set about controlling the Nation's supplies of fish, vegetables, fresh or canned fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitutes ordinarily handled by wholesale grocers or produce dealers or any of them, as alleged under this head.

They deny that to accomplish said purpose, or to accomplish
105 any purpose, they, or any of them ever availed themselves of advantages available in route cars, auto trucks, branch houses, storage warehouses owned or controlled by the Cudahy defendants, or any of them; they deny that said advantage, or any advantages, were ever employed by Cudahy defendants in fixing prices so low as to gradually or otherwise eliminate competition, as alleged under this head.

They deny that they have participated in any attempts to monopolize which have resulted in complete control, or any control, in any substitute food lines, or that they are invading any fields, as alleged under this head.

Extent to which the monopolistic attempts have been successful

Financial growth, present net worth, and volume of business: Cudahy defendants, as to the allegations under this subhead, say that they have no direct or authoritative information concerning the

subject matter of the first paragraph, but that they are informed and believe that said allegations are untrue. Therefore, upon information and belief, they deny said allegations and each of them under the first paragraph of this subhead.

Cudahy defendants deny that there has been realized by the Cudahy individual defendants, or any of them, vast profits or any profits, in addition to those shown upon the books of the parent company, arising from any advantages or privileges growing out of interlocking control of stockyards and stockyard appurtenances, as alleged in the second paragraph under this subhead.

Number of controlled companies:

Cudahy defendants deny the allegations under this subhead, and particularly they deny that they, or any or all of them, control or have any interest in 762 corporations, or 574 corporations, or 131 trade names, or in any number of corporations or trade names remotely approximating either of said alleged numbers.

Cudahy defendants deny that they have acquired or have organized any corporations, whatever, in furtherance of any general scheme and plan of action with defendants other than Cudahy defendants, as alleged under this subhead.

Extent of industrial control in the substitute foods and unrelated commodities:

Cudahy defendants deny that they, or any of them, exercise any degree of control in the various mentioned industries, as alleged under this subhead.

Cudahy defendants, as to the allegations concerning the business of Armour & Company, have no direct or authoritative information, and, therefore, neither admit nor deny the same.

Cudahy defendants deny that they, or any of them, are en-
106 gaged in the business of canned fish, vegetables, and sundry canned and dried fruit, and soda fountain supplies.

Cudahy defendants deny that they, or any of them, are engaged in the business of fruit preserves and grape juice, except only that Edward A. Cudahy, sr., and Edward A. Cudahy, jr., own and control a corporation called the Red Wing Company (Inc.), which manufactures fruit preserves and grape juice in a small and relatively negligible amount, and which has always been entirely independent of the Cudahy Packing Company.

Individual defendants

Cudahy defendants admit that the Cudahy individual defendants are either officers, directors, agents, or employees of the Cudahy parent company. They deny that Cudahy individual defendants are financially interested to a great extent in stockyards, but aver that none of them is financially interested therein except only as above set forth. They deny that any of said Cudahy individual defendants are financially interested in terminal railways, cattle loan banks, rendering companies, and other institutions interrelated with stock-

yards, except only that E. A. Cudahy, sr., owns, and for more than twenty years has owned, eighty (80) shares of stock in one rendering company and twenty-five (25) shares of stock in another. They deny that any acts of theirs, or any of them, enable the Cudahy parent company to carry out the purpose of the supposed combinations described in said bill of complaint, and they deny that any such combination exists.

They deny that the Cudahy parent company, or its subsidiaries, either by itself or in conjunction with any other person or corporation, has complete control, or is likely ever to have complete control, or any control, over meat products or substitute foods, as alleged under this subhead.

Prayer

Wherefore, these defendants, having answered this bill of complaint, deny that the plaintiff therein is entitled to the relief sought by the prayer of said bill of complaint, or to any relief whatever, against Cudahy defendants, or any of them, and hence pray that they may be, and that each of them may be, hence dismissed.

The Cudahy Packing Company, Parent Company; the Cudahy Packing Company of Nebraska; the Cudahy Packing Company of Louisiana, Limited; the Cudahy Packing Company of Alabama, Nagle Packing Company, Subsidiaries; Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples, Individuals, all appearing by

GEORGE T. BUCKINGHAM,
THOS. CREIGH,
Solicitors for Cudahy Defendants.

Dated February 27, 1920.

107 In Supreme Court of the District of Columbia

Answer of Western Meat Company and others

Filed February 27, 1920

[Title omitted.]

The joint and several answer of the following-named defendants to the bill of complaint filed herein

Corporations:	Organized under the laws of—
Western Meat Company	California.
Oakland Meat and Packing Company	California.
Nevada Packing Company	Nevada.

Individual:
Fred L. Washburn.

These defendants now and at all times hereafter saving unto themselves all manner of benefits and advantages of exception which can

or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering say:

These defendants aver that none of the corporations described as parent companies in the bill of complaint in this cause has any ownership, interest, or title in and to any of the capital stock or property of any of these corporation defendants, and none of these corporation defendants is a subsidiary of any of said parent companies.

Court's jurisdiction

These defendants neither admit nor deny that the parent companies referred to in the bill of complaint, either directly or through subsidiaries are engaged in—

108 (a) The purchase and slaughter of livestock;

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered livestock;

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the salughtered animal;

(d) The production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used;

(e) The manufacture, canning, or otherwise preparing for the market, sale, and distribution of certain food supplies other than meats;

(f) The manufacture and sale of various other articles commonly purchased and used either by the producer of livestock, the companies transporting the livestock or dressed meats, or the competitors of the parent companies (these are hereinafter referred to as unrelated commodities);

but leave the complainant to make due proof thereof.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, have made any contract or in any manner or by any act, method, or means have engaged in or are or have been a party to any combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, in any manner or by any act, method, or means have monopolized or attempted to monopolize or have combined or conspired with any other person, persons, firm, or corporation to monopolize any part of the trade or commerce among the several States or with foreign nations.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, acting by and through their principal officers or otherwise, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities, referred to in the bill of complaint.

These defendants deny that they or any of them, in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them are attempting to increase and extend said alleged monopoly of the products and commodities referred to in the bill of complaint. These defendants neither admit nor deny that the said parent companies and their subsidiaries artifically control the supply and price of the food supplies of the Nation, but leave the complainant to make due proof thereof.

109 Object to be attained

These defendants deny that they have created or obtained any monopoly in the interstate trade or commerce of livestock, meat products, and substitute foods, as charged in the bill of complaint; and these defendants deny that any monopoly by the defendants named in the bill of complaint, as charged therein, exists. These defendants deny that there has been or is in existence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce among the several States.

On the contrary, these defendants allege that they and each of them is in actual and keen competition with each and every so-called parent company and its subsidiaries.

As to the allegations and charges relating to the so-called parent companies, contained in the sections or subdivisions of the bill of complaint, entitled "The nature of the business and method by which it is conducted," "The stockyards," "Conveniences and facilities controlled by stockyards," "Branch houses, route cars, auto trucks, and cold-storage warehouses," "The parent companies' acquisition of above-described facilities and their purpose in doing so," and "Contracts in restraint of trade," these defendants neither admit nor deny the truth thereof, but leave the complainant to make due proof thereof.

Control of substitute foods

These defendants deny that they, or any of them, have eliminated competition in meat products, as charged in the bill of complaint. These defendants further deny that they or any of them set about to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other

foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint.

These defendants deny that they, or any of them, ever employed their distributive facilities, or otherwise, to fix prices so low as to eliminate competition.

These defendants deny that they, or any of them, have attempted to monopolize commerce in any of the food products mentioned in the bill of complaint, and they deny that any act or acts of these defendants have resulted in the defendants obtaining complete control of any food product, as charged in the bill of complaint.

These defendants deny that unless prevented by a decree of this court the defendants will, within the compass of a few years, control the quantity and price of each article of food found on the American table, as charged in the bill of complaint.

Extent to which the monopolistic attempts have been successful

These defendants neither admit nor deny the allegations and charges relating to the so-called parent companies, contained
110 in the section or subdivision of the bill of complaint, entitled as above, but leave the complainant to make due proof thereof, except that these defendants deny that, if the growth of the parent companies and their subsidiaries is permitted to continue unchecked, they will within a few years completely control the various industries in which the defendants are engaged.

Individual defendants

Defendant Fred L. Washburn denies that he is either an officer, director, agent, or employee of any of the so-called parent companies or their so-called subsidiaries, or a large stockholder of any of the said parent companies or their subsidiaries, and he further denies that, in his individual capacity, he is financially interested to a great extent in the stockyards, terminal railways, cattle loan banks, rendering companies, and other companies intimately related with the stockyards as charged in the bill of complaint. He further denies that in addition to his individual holdings he holds stock in any corporation dealing in the so-called substitute foods and so-called unrelated commodities for the benefit of the said parent companies.

Defendant Fred L. Washburn denies that he has or exercises any control over the facilities or instrumentalities of the meat business as charged in the bill of complaint, and he denies that by reason of any interest which he may have in such corporations dealing in so-called substitute foods and so-called unrelated commodities, the so-called parent companies are enabled to carry out the alleged purpose of the combinations charged in the said bill of complaint.

Defendant Fred L. Washburn denies that any interest which he may have in any corporation hereinbefore described, is now or will continue to be a sinister or ever present means of furthering any

attempt to monopolize or to perfect a monopoly so that the so-called parent companies or their subsidiaries will have or will ever have complete control either of meat products or of all so-called substitute foods consumed in the United States as charged in the bill of complaint.

Subsidiaries defendants

These defendants deny that they, or any of them, are subsidiaries owned or controlled by the so-called parent companies, and they further deny that the parent companies, or any of them, has any ownership, interest, or title in and to any of the capital stock or property of any of these defendants.

Conclusion

As to all other averments of said bill of complaint which are not hereinbefore denied or admitted, these defendants make no answer, but pray strict proof.

These defendants allege that the allegations and charges in
111 each of the paragraphs of the bill of complaint are not sufficiently definite and specific to constitute a violation of law, but are too general and vague.

These defendants allege that the bill of complaint does not allege acts or facts to constitute a violation of law, but that the charges contained in the bill of complaint and in each paragraph thereof are mere statements of legal conclusions.

These defendants deny that complainant is entitled to the relief, or any part thereof, as prayed for in its bill of complaint, and allege that complainant under the allegations of its complaint is without standing or right in this court or in any court of equity.

These defendants deny all and all manner of unlawful acts whatsoever whereof they are in anywise by the said bill of complaint charged; all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct.

These defendants pray in all things the same benefit and advantage of this, their answer, as if they had pleaded or demurred to said bill of complaint.

Wherefore, these defendants pray that the bill of complaint herein be dismissed with costs.

WESTERN MEAT COMPANY,
OAKLAND MEAT AND PACKING COMPANY,
NEVADA PACKING COMPANY,
FRED L. WASHBURN,
By HENRY VEEDER, *Their Solicitor.*

112 In Supreme Court of the District of Columbia

Answer of New England Dressed Meat & Wool Company and others

Filed February 27, 1920

[Title omitted.]

The joint and several answer of the following corporations, defendants, to the bill of complaint filed herein

Name	Organized under laws of—
New England Dressed Meat & Wool Company	Maine.
North Packing & Provision Company	Maine.
The Sperry & Barnes Company	Connecticut.
John P. Squire & Company	Maine.
John P. Squire & Company (Inc.)	Massachusetts.
John P. Squire & Company (Inc.)	Rhode Island.
Springfield Provision Company	New Hampshire.
White, Pevey and Dexter Company	Maine.

These defendants, now and at all times hereafter saving unto themselves all manner of benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, imperfections, and insufficiencies in the complainant's said bill of complaint contained, for answer thereto or to so much and such parts thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

These defendants aver that none of the corporations described as parent companies in the bill of complaint has any ownership, interest, or title in and to any of the capital stock or property of any of these defendants, and none of these defendants is a subsidiary of any of said parent companies.

Court's jurisdiction

These defendants neither admit nor deny that the parent companies referred to in the bill of complaint, either directly or through subsidiaries, are engaged in—

113 (a) The purchase and slaughter of livestock;

(b) The preparation and manufacture of dressed meat and by-products of the slaughtered livestock;

(c) The curing, canning, or otherwise preparing for the market of the edible products and by-products of the slaughtered animal;

(d) The production and sale of nonedible by-products and of articles in the manufacture of which these nonedible products are largely used;

(e) The manufacture, canning, or otherwise preparing for the market, sale, and distribution of certain food supplies other than meats;

(f) The manufacture and sale of various other articles commonly purchased and used either by the producer of livestock, the companies transporting the livestock or dressed meats, or the competi-

tors of the parent companies (these are hereinafter referred to as unrelated commodities);
but leave the complainant to make due proof thereof.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries or any of them, or otherwise, have made any contract, or in any manner or by any act, method, or means have engaged in, or are or have been a party to any combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations.

These defendants deny that they or any of them in collusion, agreement, or combination with the so-called parent companies or their subsidiaries, or any of them, or otherwise, in any manner or by any act, method, or means have monopolized or attempted to monopolize, or have combined or conspired with any other person, persons, firm, or corporation to monopolize any part of the trade or commerce among the several States or with foreign nations.

These defendants deny that they, or any of them, in collusion, agreement, or combination with the so-called parent companies or their subsidiaries, or any of them, or otherwise, acting by and through their principal officers, or otherwise, have attempted to dominate, control, and monopolize a very great proportion of the food supply of the Nation and have thereby built up an unlawful monopoly and control over divers and sundry products and commodities referred to in the bill of complaint.

These defendants deny that they, or any of them, in collusion, agreement, or combination with the so-called parent companies or their subsidiaries, or any of them, are attempting to increase and extend said alleged monopoly of the products and commodities referred to and as charged in the bill of complaint. These defendants neither admit nor deny that the said parent companies and their subsidiaries artificially control the supply and price of the food supplies of the Nation but leave the complainant to make due proof thereof.

114 Object to be attained

These defendants deny that they, or any of them, have created or obtained any monopoly in the interstate trade or commerce of livestock, meat products, and substitute foods, as charged in the bill of complaint; and these defendants deny that any monopoly by the defendants named in the bill of complaint exists, as is charged in the bill of complaint. These defendants deny that there has been or is in existence, as charged in the bill of complaint, any contract, combination, or conspiracy in restraint of trade or commerce among the several States.

On the contrary, these defendants allege that they and each of them is in actual and keen competition with each and every so-called parent company and its subsidiaries.

As to the allegations and charges relating to the so-called parent companies, contained in the sections or subdivisions of the bill of complaint, entitled "The nature of the business and method by which it is conducted," "The stockyards," "Conveniences and facilities controlled by stockyards," "Branch houses, route cars, auto-trucks, and cold-storage warehouses," "The parent companies' acquisition of above-described facilities and their purpose in doing so," and "Contracts in restraint of trade," these defendants neither admit nor deny the truth thereof but leave the complainant to make due proof thereof.

Control of substitute foods

These defendants deny that they, or any of them, have eliminated competition in meat products as charged in the bill of complaint. These defendants further deny that they, or any of them, set about to control the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other foods ordinarily handled by wholesale grocers or produce dealers, as charged in the bill of complaint.

These defendants deny that they, or any of them, ever employed their distributive facilities or otherwise to fix prices so low as to eliminate competition.

These defendants deny that they, or any of them, have attempted to monopolize commerce in any of the food products mentioned in the bill of complaint, and they deny that any act or acts of these defendants have resulted in the defendants obtaining complete control of any food product, as charged in the bill of complaint.

These defendants deny that unless prevented by a decree of this court, the defendants will, within the compass of a few years, control the quantity and price of each article of food found on the American table, as charged in the bill of complaint.

115 Extent to which the monopolistic attempts have been successful

These defendants neither admit nor deny the allegations and charges relating to the so-called parent companies contained in the section or subdivision of the bill of complaint, entitled as above, but leave the complainant to make due proof thereof, except that these defendants deny that, if the growth of the parent companies and their subsidiaries is permitted to continue unchecked, they will within a few years completely control the various industries in which the defendants are engaged.

Individual defendants

These defendants neither admit nor deny the allegations and charges relating to the individual defendants and the so-called par-

ent companies contained in the section or subdivision of the bill of complaint entitled as above, but leave the complainant to make due proof thereof.

Subsidiaries defendants

These defendants deny that they, or any of them, are subsidiaries owned or controlled by the so-called parent companies, and they further deny that the parent companies, or any of them, has any ownership, interest, or title in and to any of the capital stock or property of any of these defendants.

Conclusion

As to all other averments of said bill of complaint which are not hereinbefore denied or admitted, these defendants make no answer, but pray strict proof.

These defendants allege that the allegations and charges in each of the paragraphs of the bill of complaint are not sufficiently definite and specific to constitute a violation of law, but are too general and vague.

These defendants allege that the bill of complaint does not allege acts or facts to constitute a violation of law, but that the charges contained in the bill of complaint and in each paragraph thereof are mere statements of legal conclusions.

These defendants deny that complainant is entitled to the relief, or any part thereof, as prayed for in its bill of complaint, and allege that complainant under the allegations of its complaint is without standing or right in this court or in any court of equity.

These defendants deny all and all manner of unlawful acts whatsoever whereof it is in anywise by the said bill of complaint charged; all of which matters and things these defendants are ready and willing to prove as this honorable court shall direct.

These defendants pray in all things the same benefit and advantage of this, their answer, as if they had pleaded or demurred to the bill of complaint.

116 Wherefore these defendants pray that the bill of complaint herein be dismissed with costs.

NEW ENGLAND DRESSED MEAT & WOOL COMPANY,
NORTH PACKING & PROVISION COMPANY,
THE SPERRY & BARNES COMPANY,
JOHN P. SQUIRE & COMPANY,
JOHN P. SQUIRE & COMPANY, INC. (Massachusetts),
JOHN P. SQUIRE & COMPANY,
INCORPORATED (Rhode Island),
SPRINGFIELD PROVISION COMPANY,
WHITE, PEVEY AND DEXTER COMPANY,
By HENRY VEEDER, *Their Solicitor.*

In Supreme Court of the District of Columbia

Stipulation and proposed decree

Filed February 27, 1920

[Title omitted.]

It is hereby stipulated by and between the parties hereto that the decree hereinafter contained may, upon consent of the parties and without any findings of fact, be entered in this cause.

The corporation and individual defendants, while maintaining the truth of their answers and asserting their innocence of any violation of law in fact or intent, nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, consent to the making and entry of said decree; but this stipulation shall not constitute or be considered as an admission, and the rendition or entry of the decree, or the decree itself, shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States.

The decree above referred to is as follows:

(In the original "Stipulation and proposed decree" filed in the Supreme Court of the District of Columbia there was inserted here the proposed decree which was the decree entered in this cause
117 by said court and is set out in full in the book on pages 1 to 12, both inclusive, but is omitted here to avoid unnecessary repetition.)

Dated Washington, D. C., February 27, 1920.

A. MITCHELL PALMER,
Attorney General of the United States.

CHAS. J. FAULKNER, JR.,

Attorney for Armour and Company (Ill.), Armour & Company (N. J.), Armour & Company (Ky.), Armour & Company (Tex.), Armour & Company (Ltd.) (La.), The Anglo American Provision Company (Ill.), The Colorado Packing and Provision Company (Colo.), Fowler Packing Company (Me.), Hammond Packing Company (Ill.), The New York Butchers Dressed Meat Company (N. Y.), Atlantic Hotel Supply Company (Inc.) (N. Y.); J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willets, Frederick W. Croll, George B. Robbins.

HENRY VEITCH,

Attorney for Swift & Company (Ill.), Swift & Company (W. Va.), Swift & Company (Inc.) (Ky.), Swift & Company (Ltd.) (La.), Swift & Company (Me.), Swift Beef Company (Me.), United Dressed Beef Co. of New York (N. Y.), J. J. Harrington & Company (Inc.) (N. Y.), Bimbler

Company (N. J.), The G. H. Hammond Company (Mich.), Omaha Packing Company (Ky.), Plankinton Packing Company (Wis.), Sturtevant & Haley, Beef & Supply Company (Mass.), E. K. Pond Packing Company (Ill.), Van Wagenen & Schickhaus Company (N. J.), Western Packing Company (Colo.), Hammond Beef Company (Mich.), Omaha Meat Company (Calif.), A. Canfield Commission Company (N. J.), H. C. Derby Company (N. Y.), Metropolitan Hotel Supply Company (Me.), Vermont Supply Company (Mass.), The Hotchkiss Beef Co. (N. Y.), New England Dressed Meat & Wool Company (Me.), North Packing & Provision Company (Me.), Sperry & Barnes Company (Conn.), John P. Squire & Company (Me.), John P. Squire & Company (Inc.) (Mass.), John P. Squire & Company (Incorporated) (R. I.), Springfield Provision Company (N. H.), White, Pevey & Dexter Company (Me.), Louis F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, William B. Traynor.

M. W. BORDERS,

Attorney for Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N. J.), Morris & Company (La.), Morris & Company of Pennsylvania
118 *(Pa.), Joseph Stern & Sons, Inc. (N. Y.), Brooklyn Beef & Provision Co. (N. Y.), Condit Beef and Provision Company (N. J.), Corwin Wilde Company (Mass.), Donnelly & Company, Inc. (Mass.), National Hotel Supply Company (Ill.), Chamberlain & Company, Inc. (Mass.), J. M. Wilson & Company (Mass.), Middletown Beef and Provision Company (Mass.), Glenn & Anderson Co. (Ill.), Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. McFarlane, Harry A. Timmins.*

JEWELL P. LIGHTFOOT,

Attorney for Wilson & Co., Inc. (N. Y.), Wilson & Co. (N. J.), Wilson & Co., Inc., of Calif. (Nev.), Wilson & Co., Inc., of Louisiana (La.), Wilson & Co., Inc., of Okla. (Okla.), South Dakota Provision Co. (S. D.), Gotham Hotel Supply Co., Inc. (N. Y.), Standard Beef Co. (N. Y.), Stiefel-O'Mara Co., Inc. (N. Y.), Drexel Packing Co. (N. Y.), Albert Lea Packing Co., Inc. (Va.), Mississippi Packing Co., Inc. (Va.), Morton-Gregson Co. (Del.), Paul O. Heymann Co. (W. Va.), Standard Provision Co. (N. J.), Central Products Corporation (Va.), Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D.

Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good.

THOMAS CREIGH,

Attorney for the Cudahy Packing Company (Me.), Cudahy Packing Company of Nebraska (Neb.), Cudahy Packing Company of Alabama (Ala.), Cudahy Packing Company of Louisiana, Ltd. (La.), Nagle Packing Company (N. J.), Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, George Marples.

HENRY VEEDER,

Attorney for Western Meat Company (Cal.).

HENRY VEEDER,

Attorney for Oakland Meat and Packing Company (Calif.).

HENRY VEEDER,

Attorney for Nevada Packing Company (Nev.).

HENRY VEEDER,

Attorney for Fred L. Washburn.

119 In Supreme Court of the District of Columbia

Decree and consents

Filed February 27, 1920

[Title omitted.]

This cause having come on to be heard on this 27th day of February, in the year 1920, before the Hon. Walter I. McCoy, Chief Justice, and the petitioner having appeared by the Hon. A. Mitchell Palmer, Attorney General of the United States, by its district attorney, John E. Laskey, and by Isidor J. Kresel, John H. Atwood, and Joseph Sapinsky, special assistants to the Attorney General, thereto duly authorized, and having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they, nevertheless,

desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.

Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows:

First. That the corporation defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and
120 restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint of trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally monopolizing or attempting to monopolize or combining or conspiring with each other, or with any other person or persons, to monoplize any part of such trade or commerce.

Second. That the defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them, or to any of their officers, directors, servants, or employees, for the use and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby, perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any

other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in any of the articles or commodities named and described in paragraph fourth of this decree, except in so far as permitted in said paragraph fourth, and except refrigerator cars when in good faith leased to common carriers, or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell, or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be made without sub-
121 mitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are purchased, transported, or used (1) as supplies in operating their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Canned oysters.	Bulk, canned, and cured herring.	Canned sardines.
Canned mackerel.	Canned salmon.	Canned shrimp.
Bulk mackerel.		Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Corn.	Celery.
Navy beans.	Okra.	Garlic.
Lima beans.	Potatoes.	Horse-radish.
Peas.	Tomatoes.	Pumpkins.
Beets.		

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit:

Ginger.	Pineapple.	Strawberries.
Cherries.	Raspberries.	Apples.
Apple butter.	Currents.	Prunes.
Apricots.	Figs.	Raisins.
Blackberries.	Gooseberries.	Dates.
Peaches.	Oranges.	

122 4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks (grape juice is not included in this paragraph 4; see paragraph 14), including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.	Ginger ale.	Orange extract.
Cherry juice.	Green pineapple sirup.	Root beer.
Coca Cola.	Lemon extract.	Vanilla extract.
Creme de menthe.	Marshmallow topping.	Vin fiz.
Crushed nut frappe.		

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.	Mustard.	Pepper.
Chili sauce.	Mustard seed.	Pickles.
Cinnamon.	Olives.	Spinach chili.
Cloves.	Oyster cocktail sauce.	Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit:

Almonds.	Pecans.	Walnuts.

But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

11. Cereals, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Grits.	Clipped oats.	Feed wheat.
Oats.	Corn grits.	Rolled oats.
Hominy.	Ground meal.	Standard middlings.
Hominy feed.	Ground oats.	Standard spring brand.
Horse feed.	Ground corn.	Spaghetti.
Brewers' flakes.	Cracked corn.	Vermicelli.
Brewers' grit.	Crushed white oats.	Macaroni.
Brewers' meal.	Feed barley.	Corn flakes.
Buckwheat.	Feed meal.	Wheat foods.
Canned hominy.		

12. Grain.

13. Miscellaneous articles, to wit:

Cigars.	Brass castings for heavy ordnance.	Pitting and fruit handling machinery.
China.	Brick.	Roofing.
Furniture.	Builders' hardware.	Sand and gravel.
Bluing, starch.	Bumping posts for railroads.	Shingles.
Fence posts and wire fences.	Cement, lime, plaster.	Soda fountains or parts thereof.
Alfalfa meal.	Doors and windows.	Structural steel.
Babbitt.	Dried brewers' grains.	Tile.
Bar iron.	Lath.	Waste.
Binding and twine.		

14. Grape juice.

123 And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants, and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50 per cent or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business

of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Canned oysters.	Bulk, canned, and cured herring.	Canned sardines.
Canned mackerel.		Canned shrimp.
Bulk mackerel.	Canned salmon.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Corn.	Celery.
Navy beans.	Okra.	Garlic.
Lima beans.	Potatoes.	Horse radish.
Peas.	Tomatoes.	Pumpkins.
Beets.		

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit:

Ginger.	Pineapples.	Strawberries.
Cherries.	Raspberries.	Apples.
Apple butter.	Currants.	Prunes.
Apricots.	Figs.	Raisins.
Blackberries.	Gooseberries.	Dates.
Peaches.	Oranges.	

124 4. Confectionery, sirups, soda-fountain supplies, and sirups and soft drinks not including grape juice, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.	Ginger ale.	Orange extract.
Cherry juice.	Green pineapple sirup.	Root beer.
Coca Cola.	Lemon extract.	Vanilla extract.
Creme de menthe.	Marshmallow topping.	Vin fiz.
Crushed nut frappe.		

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.	Mustard.	Pepper.
Chili sauce.	Mustard seed.	Pickles.
Cinnamon.	Olives.	Spinace chilli.
Cloves.	Oyster cocktail sauce.	Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.
8. Nuts, including therein the following, to wit:

Almonds. Pecans. Walnuts.

But not including peanuts.
9. Flour, sugar, and rice.
10. Bread, wafers, crackers, biscuits.

And further perpetually enjoining and restraining said individual defendants and each of them from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which, by reason of the relation of said individual defendants or any of them to the corporation defendants or any of them, would have the purpose or effect of giving to such business of dealing in the articles hereinabove in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail meat markets in the United States: Provided, however, That nothing contained in this decree shall prohibit said defendants or any of them from continuing to conduct the retail meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail meat market shall be continued to be operated for that purpose.

125 Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States; provided, however, that nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public cold-storage warehouses now maintained by the defendants, or any of them at stockyards where said defendants or any of them now maintain packing plants, nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of them may be interested, nor from renting space in any cold-storage warehouse directly or indirectly owned or leased by any of them to the public whenever such space is not in good faith required

or needed by the defendants for their own use, nor from storing products for the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Eighth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing, or otherwise dealing in fresh milk or cream; provided, however, that nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting, and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleomargine or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as feed or in combination with any commodity not specifically mentioned and described in paragraph fourth hereof; and further provided that nothing herein contained shall be construed as preventing said defendants from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by themselves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal
126 trade practices of any nature whatsoever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers; provided, however, that the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard market companies and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stockyard market company or stockyard terminal railroad, or in any corporation organized to take over such public stockyard market companies or

Attorney General to determine and advise the court whether in any transaction consummated or begun at any time prior to the entry of this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General in writing notifies the defendant or defendants concerned with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto, and the corporation defendants are further directed to submit to the Attorney General or to any Assistant Attorney General by him duly authorized all of their books, records, correspondence, or other documents in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the first day of October, nineteen hundred and nineteen, of any of their interests in public stockyard market companies, stockyard terminal railroads, stockyard newspapers or journals, public cold-storage warehouses and retail meat markets, or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, and all leases, contracts, or arrangements or other disposals made by any of the defendants since the first of October, nineteen hundred and nineteen, affecting their delivery systems, shall be submitted by
129 the defendants to the court for its investigation and determination as to whether the same were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application with the parties may make with respect to this decree.

WALTER I. McCOY,
Chief Justice.

FEBRUARY 27, 1920.

The defendants, Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company, and Fred L. Washburn, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

HENRY VEEDER,
Attorney for Above-named Defendants.

Dated 27th day of February, 1920.

The defendants, Wilson & Co., Inc. (N. Y.), Wilson & Co. (N. J.), Wilson & Co., Inc., of Calif. (Nev.), Wilson and Co., Inc., of Louisiana (La.), Wilson & Co., Inc., of Okla. (Oklahoma), South Dakota Provision Co., Gotham Hotel Supply Co., Inc., Standard Beef Co., Stiefel-O'Mara Co., Inc., Drexl Packing Co., Albert Lea Packing Co., Inc., Mississippi Packing Co., Inc., Morton-Gregson Co., Paul O. Reymann Co., Standard Provision Co., Central Products Corporation, Thomas E. Wilson, Arthur Lowenstein, Jacob Moog, Vonce De Leon Skipworth, Arthur L. Smith, James A. Hamilton, George D. Hopkins, Adolph E. Peterson, George H. Cowan, William C. Buethe, Carl F. Burrell, James C. Good, appear herein generally by Jewel P. Lightfoot, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

JEWEL P. LIGHTFOOT,
Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants, the Cudahy Packing Company (Me.), Cudahy Packing Company of Nebraska, Cudahy Packing Company of Alabama, Cudahy Packing Company of Louisiana, Ltd., Nagel Packing Company, Edward A. Cudahy, sr., Edward A. Cudahy, jr., Guy C. Shepard, John E. Wagner, Andrew W. Anderson, Emil A. Strauss, Frank E. Wilhelm, and George Marples, appear herein generally by Thomas Creigh, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in the cause without further notice.

THOMAS CREIGH,
Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants, Armour and Company (Ill.), Armour & Company (N. J.), Armour & Company (Ky.), Armour & Company (Tex.), Armour & Company, Ltd. (La.), the Anglo American Provision Company, the Colorado Packing and Provision Company, Fowler Packing Company, Hammond Packing Company, the New York Butchers Dressed Meat Company, Atlantic Hotel Supply Company, Inc., J. Ogden Armour, Charles W. Armour, A. Watson Armour, Laurence H. Armour, Arthur Meeker, Robert J. Dunham, F. Edson White, George M. Willetts, Frederick W. Croll, and George B. Robbins, appear herein generally by Charles J. Faulkner, jr., their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

CHARLES J. FAULKNER, JR.,
Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants, Morris & Company (Me.), Morris Packing Company (Me.), Morris & Company (N. J.), Morris & Company (La.), Morris & Company of Pennsylvania (Pa.), Joseph Stern & Sons, Inc., Brooklyn Beef & Provision Co., Condit Beef and Provision Company, Corwin, Wilde Company, Donnelly & Company, Inc., National Hotel Supply Company, Camberlain & Company, Inc., J. M. Wilson Company, Middletown Beef and Provision Company, Glenn & Anderson Co., Edward Morris, Nelson Morris, Louis H. Heymann, Charles M. Macfarlane, and H. A. Timmins, appear herein generally by M. W. Borders, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

M. W. BORDERS,
Attorney for Above-named Defendants.

Dated Washington, February 27, 1920.

The defendants, Swift and Company (Ill.), Swift and Company (W. Va.), Swift and Company, Inc. (Ky.), Swift and Company, Ltd. (La.), Swift and Company (Me.), Swift Beef Company (Me.), United Dressed Beef Co. of New York, J. J. Harrington and Company, Inc., Bimbler Company, the G. H. Hammond Company, Omaha Packing Company, Plankington Packing Company, Sturtevant & Haley Beef & Supply Company, E. K. Pond Packing Com-
131 pany, Van Wagenen and Schickhaus Company, Westing Packing Company, Hammond Beef Company, Omaha Meat Company, A. Canfield Commission Company, H. C. Derby Company, Metropolitan Hotel Supply Company, Vermont Supply Company, the Hotchkiss Beef Co., New England Dressed Meat & Wool Company, North Packing & Provision Company, the Sperry & Barnes Company, John P. Squire & Company (Me.), John P. Squire & Company, Inc. (Mass.), John P. Squire & Company, Inc. (R. I.), Springfield Provision Company, White, Pevey and Dexter Company, Louis

F. Swift, Edward F. Swift, Charles H. Swift, Gustavus F. Swift, jr., Harold H. Swift, Alden B. Swift, George H. Swift, Laurence A. Carton, Frank S. Hayward, Charles A. Peacock, Wilfred W. Sherman, Wellington Leavitt, John M. Chaplin, and William B. Traynor, appear herein generally by Henry Veeder, their attorney, and do hereby consent that the foregoing decree may be entered herein upon the stipulation of the parties filed in this cause without further notice.

HENRY VEEDER,
Attorney for the Above-named Defendants.

Dated Washington, February 27, 1920.

In Supreme Court of District of Columbia

Petition of Southern Wholesale Grocers Association and others for leave to intervene

Filed September 10, 1921

* * * * * * *

To the honorable the judges of the Supreme Court of the District of Columbia:

Come now the Southern Wholesale Grocers Association, a corporation duly and legally incorporated under the laws of the State of Tennessee, and a citizen of the State of Tennessee; Henry Sears & Company, a corporation of the Commonwealth of Massachusetts; John Hoffman & Sons Company, a corporation of the State of Wisconsin; Mason Ehrman & Company, a corporation of the State of Oregon; J. M. Radford Grocery Company, a corporation of the State of Texas; Southern Distributing Company, a corporation of the State of Virginia; Hall Grocery Company, a corporation of the State of Arkansas; Albert Mackie & Company, Ltd., and the Hicks Company, corporations of the State of Louisiana; W. D. Cleveland & Sons, a corporation of the State of Texas; Rappides Grocery Company, Inc., a corporation of the State of Louisiana; Oliver Finnie Grocery Company, a corporation of the State of Tennessee, and move the court for leave to intervene in the above-styled case, and represent to the court that they are interested in the subject matter of this suit and that their interest arises as follows:

Southern Wholesale Grocers Association is an association of wholesale grocers, with membership in excess of 2,000, whose mem-
132 bers reside in at least 40 of the States of the Union, and such members are engaged in the handling and selling all commodities usually handled and dealt in by wholesale grocers.

The other petitioners herein are themselves wholesale grocers doing business in their respective communities and are directly interested in the matter of this suit and this petition is brought on behalf of wholesale grocers throughout the United States who are in the same position and bear the same relation to this cause as petitioners herein

other than the Wholesale Grocers Association. Said wholesale grocers, petitioners herein, are each and all buying, selling, handling, and dealing in the commodities other than meats described in and affected by the decree heretofore entered in this cause.

Prior to the 27th day of February, 1920, the date on which the original decree was entered in this cause, petitioner Southern Wholesale Grocers Association, the other petitioners herein and other wholesale grocers throughout the United States similarly situated and interested as petitioners herein other than the Wholesale Grocers Association, presented facts to the Federal Trade Commission of the United States showing and tending to show that the defendants in this cause were guilty of unfair methods of competition in violation of section 5 of the act of Congress creating said commission and in violation of the antitrust laws and obstructing competition and which tended to create a monopoly in the Nation's food. Said Federal Trade Commission had, prior to February 27, 1920, made and filed a report finding that said defendants had engaged in and were engaged in practices so violative of the laws of the United States and which practices created and tended to create a monopoly.

Petitioners also prior to said last-named date consulted with the Department of Justice and made suggestions as to the form which said decree of February 27, 1920, subsequently took and petitioners, through their counsel, became in fact, although not in name, parties participating in the proceedings, leading up to the entry of said original decree, and that by the entry of said decree the controversy theretofore existing between petitioners and those similarly situated on the one side and the defendants in this cause on the other, were largely adjusted and the petitioners respectfully show that said decree was and is just, legal, and proper and prescribes lawful, fair, and appropriate restrictions on the conduct of the defendants.

Petitioners in July or August, 1919, brought a complaint against the Director General of Railroads and all the railroads of the United States before the Interstate Commerce Commission, alleging and charging that said railroads yielding to the power of the packers, defendants herein, had accorded such packers rates and privileges unjust, unreasonable, and unduly preferential in violation of the acts to regulate commerce, and that petitioners were in direct competition with said packers, all of which allegations were true as appears from said complaint on file with the Interstate Commerce Commission, a copy of which will be exhibited to the court whenever necessary.

Petitioners herein, after the entry of said original decree,
133 recognized the propriety and efficacy thereof and suspended the prosecution of said complaint before the Interstate Commerce Commission.

Petitioners further show that a complaint of the National Wholesale Grocers Association, an association with purposes similar to the Southern Wholesale Grocers Association, against the railroads was brought to and heretofore pending before the Interstate Commerce Commission similar to that brought by the Southern Wholesale

Grocers Association and consolidated therewith, numbered on the docket of the Interstate Commerce Commission as Docket No. 10745, and docketed No. 10745—Sub. No. 1. Some of the defendants to the decree in this case and all of the principal defendants herein, intervened in said proceeding before the Interstate Commerce Commission and in their interventions relied upon the decree herein as the reason why the complaints before the Interstate Commerce Commission should not be granted.

When the decree was entered in this cause your petitioners herein being, as aforesaid, by representation parties recognized that said decree by eliminating the unfair and unlawful practices of the defendants herein in this case before the Interstate Commerce Commission did not themselves further prosecute their complaint nor did these petitioners take any proceeding or attempt to take any action to enforce the findings of the Federal Trade Commission.

Thereafter on the 22nd day of June, 1921, the Interstate Commerce Commission decided said two complaints and in substance denied the relief asked for therein. In the course of the decision of said commission the decree in this case was referred to. Petitioners respectfully call attention to the opinion of the Interstate Commerce Commission, which is reported in vol. 62, page 375, et seq., of the opinions of that commission.

Petitioners believe, and believing so allege, that complainants in said petition to the Interstate Commerce Commission would have obtained the relief sought by said complaints had not this court already granted the relief by the decree of February 27, 1920. Should this court now set aside or materially lessen the force of its decree heretofore entered, the result would be to give the defendants herein an unjust and inequitable advantage over petitioners and others in like situation.

To set aside or weaken the decree heretofore entered in this cause would be contrary to the form and purposes thereof and would deprive petitioners of their rights and petitioners have no relief except in this court and in this cause, petitioners having by reliance on said decree lost advantages and rights which they had prior to the entry thereof and defendants herein having obtained a cessation of the prosecution of petitioners' complaint before the Interstate Commerce Commission and having been freed from any attempt by petitioners to make effective the finding of the Federal Trade Commission defendants are estopped from seeking or obtaining any modification of the decree which perpetually enjoined them from the unlawful acts of which they were guilty, to the injury of your petitioners herein. Only by the power of this Court of Equity
134 can the rights of the petitioners be protected and petitioners have a direct and special interest in the issues in this case and in the maintenance of said decree. Petitioners present herewith their intervention herein.

Wherefore, the four named intervening petitioners, being otherwise remediless, ask the court to make and cause to be entered herein

an order permitting them to file said intervention presented herewith to the end that petitioners may fully plead their respective interests, be notified of all hearings subsequently had herein and be heard on any motion or proceeding seeking to change, weaken or otherwise modify the original decree in this cause.

HOKE SMITH,
Washington, D. C.;
EDGAR WATKINS,
Fourth National Bank Bldg., Atlanta, Ga.,
Attorneys for Petitioner.

Duly sworn to by Joseph H. McLaurin; jurat omitted in printing.

In Supreme Court of District of Columbia

Order granting petition to intervene

Filed September 10, 1921

* * * * * * *

This cause coming on to be heard on the application of Southern Wholesale Grocers' Association, Henry G. Sears Company, Mason Ehrman & Co., John Hoffman & Sons Company, J. M. Radford Grocery Co., Southern Distributing Co., Oliver Finnie Grocery Company, Hall Grocery Co., Albert Mackie & Co., the Hicks Co., W. D. Cleveland & Sons, and Rapides Grocery Co., interveners in this suit to be made parties, and it appearing to the court that said petitioners have an interest in the subject matter of this suit sufficient to enable them to become parties thereto, it is therefore ordered, ad-
135 judged, and decreed that said petitioners have leave to intervene in said suit; this order to be without prejudice in any proceeding heretofore had in this cause.

A. A. HOEHLING, *Justice.*

In Supreme Court of District of Columbia

Intervening petition of Southern Wholesale Grocers' Association and others

Filed September 10, 1921

* * * * * * *

To the honorable the Judges of said Court:

Come now your interveners, Southern Wholesale Grocers' Association, Henry G. Sears Company, John Hoffman & Sons Company, Mason Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing Company, Hall Grocery Company, Albert Mackie & Company, Ltd., The Hicks Company, W. D. Cleveland & Sons, Rappides Grocery Company, Oliver Finnie Grocery Company, complaining of the defendants named in the decree in the above-styled

cause, hereinafter called defendants, and represent and show unto your honor:

1. Southern Wholesale Grocers' Association is a corporation duly and legally incorporated and existing under the laws of the State of Tennessee, with an office and place of business from which it transacts its business in Jacksonville, in the State of Florida.

2. Intervener Henry G. Sears Company is a corporation incorporated under the laws of the State of Massachusetts, doing business in Holyoke, in said State.

3. Intervener John Hoffman & Sons Company is a corporation incorporated under the laws of the State of Wisconsin and doing business at Milwaukee, in said State.

4. Intervener Mason Ehrman & Company is a corporation incorporated under the laws of the State of Oregon, doing business at Portland, in said State.

5. Intervener J. M. Radford Grocery Company is a corporation incorporated under the laws of the State of Texas, doing business at Aberdeen, in said State.

6. Intervener Southern Distributing Company is a corporation incorporated under the laws of the State of Virginia, doing business at Norfolk, in said State.

7. Intervener Hall Grocery Company is a corporation incorporated under the laws of the State of Arkansas, doing business at Pine Bluff, in said State.

8. Interveners the Albert Mackie & Company, Ltd., and the Hicks Company, corporations incorporated under the laws of the State of Louisiana, doing business respectively at New Orleans and Shreveport, in said State.

136 9. Intervener W. D. Cleveland & Sons is a corporation incorporated under the laws of the State of Texas, doing business at Houston, in said State.

10. Intervener Rappides Grocery Company is a corporation incorporated under the laws of the State of Louisiana, doing business at Alexandria, in said State.

11. Intervener Oliver Finnie Company is a corporation incorporated under the laws of the State of Tennessee, doing business at Memphis, in said State.

12. Southern Wholesale Grocers' Association is an association without capital stock, not engaged in business but composed of wholesale grocers located in different parts of the United States, its members being corporations, partnerships and individuals engaged in buying and selling the food products in wholesale quantities described in the decree entered in this cause on the 27th day of February, 1920. The other interveners herein are business associations, partnerships, and firms as stated, engaged in business for profit, and dealing in and handling food commodities at wholesale in interstate commerce, and are engaged in handling and dealing in the commodities described in the decree entered in this case on the 27th day of February, 1920, and this intervention is filed on behalf of the interveners herein and all

other persons in like situation and with a like relationship to the matters involved in said decree.

13. Heretofore, in July or August, 1919, intervener Southern Wholesale Grocers' Association, for itself and in behalf of its members, filed its complaint before the Interstate Commerce Commission, against the then Director General of Railroads and all the Railroads of the United States, wherein it was claimed that certain practices, rates, and classifications of the defendant railroads in interstate transportation were prejudicial and preferential to Armour & Company, Wilson & Company, Morris & Company, and the controlled corporations of said company, defendants herein, and violative of the acts to regulate commerce, and wherein it was prayed that such preferences and advantages should be inquired into, condemned, and prohibited. Said complaint was docketed before the Interstate Commerce Commission under the title of Docket No. 10745 (Sub-No. 1) and a copy of said complaint will be exhibited to the Court on the hearing hereof.

14. Subsequent to the filing of said complaint of the Southern Wholesale Grocers' Association before the Interstate Commerce Commission, hearings were had and testimony taken, but before all the testimony had been taken, to wit, on or about the 9th day of November, 1919, it being brought to the attention of the complainants and of the various packers who had intervened in said complaint, many of whom are defendants in this case, that the Attorney General of the United States was demanding an entry of a decree such as was subsequently entered in this cause on the 27th day of February, 1920, it was suggested that the complaint before the Interstate Commerce Commission should not be further prosecuted until after the entry of said decree.

15. Intervener Southern Wholesale Grocers' Association, other interveners herein, and the membership of the Southern
137 Wholesale Grocers' Association throughout the United States made suggestions as to the form that decree should take in this case, through their counsel, and when the decree was finally entered said association, the other interveners herein, and the members of said association, believing that said decree, if obeyed and maintained, would compel the defendants to said decree to limit their business methods to fair practices in interstate commerce and would permit interveners and the other members of the Southern Wholesale Grocers' Association to compete in the handling and dealing in food commodities, did not further prosecute their complaint before the Interstate Commerce Commission.

16. The Southern Wholesale Grocers' Association, however, having first moved to suspend the proceedings before the Interstate Commerce Commission, which motion was overruled, did not dismiss its complaint because it was of the opinion that to do so might weaken the petition of the National Wholesale Grocers' Association, which had filed a similar complaint against the railroads and which complaint was left pending.

17. Subsequently, to wit, on the 22nd day of June, 1921, the Interstate Commerce Commission decided the complaint of the National Wholesale Grocers' Association, which was Docket No. 10745, and in reaching its decision therein considered as a part of the record in said complaint the decree of February 27, 1920, entered in this court and recited the claims of the defendants herein who were also interveners in said complaint before said commission, and among recitations called attention to the fact that defendants herein, Swift & Company, Armour & Company, Morris & Company, Wilson & Company, and Cudahy Packing Company, asserted "that the entry of the decree eliminated the competition to which the grocers object and will bring about a result more favorable to the complainants than any obtainable by an order in this proceeding."

18. Interveners believe and so allege that the decree of February 27, 1920, did in a large part remove, as contended by the packers aforesaid, the advantages and preferences theretofore enjoyed by said packers and complained against in said complaint, and interveners further allege that said packers, defendants in said decree and interveners in said complaint, have received the benefit of said decree in the result shown by the opinion of the Interstate Commerce Commission, which opinion this court judicially knows and which will be exhibited to the court on the hearing hereof.

19. Interveners further show that if the decree in this cause entered on the 27th day of February, 1920, be modified as prayed, that such modification will effectually destroy the value of said decree, will reinstate the defendants thereto in the unlawful privileges and preferences complained against in said complaints of the National Wholesale Grocers' Association and the Southern Wholesale Grocers' Association, and that it would be inequitable and unjust and unfair to permit the defendants, after having obtained the advantages of said decree, now to be released from the inhibitory provisions thereof.

138 20. Interveners further show that the defendants to said decree, by virtue of their interrelation, their possession of private cars, and by reason of the preferences enjoyed in transportation as a result thereof, possess a partial monopoly, and if the decree be modified as prayed the distribution of many important food products will be left practically in the hands of a few large packers, who will be enabled, because of their special advantages, to monopolize such business and fix at will the prices of and restrain trade in interstate commerce in said food products.

21. Interveners further show that the defendants to said decree have a legitimate field for their operation in business of packing and distributing meat and meat products, as to which business said decree does not limit them, nor do interveners pray that there should be any interference therewith.

Wherefore, premises considered, interveners pray that any motion to modify said decree of February 27, 1920, be denied, but in the

alternative, should the court deem it proper to consider said motion, that there be no action thereon until testimony has been taken and a full hearing had, and interveners pray for such other and further relief as they may show themselves entitled to upon the further hearing of this cause.

SOUTHERN WHOLESALE GROCERS' ASSOCIATION,
HENRY SEARS COMPANY,
MASON, EHRMAN & COMPANY,
JOHN HOFFMAN & SONS COMPANY,
J. M. RADFORD GROCERY COMPANY,
SOUTHERN DISTRIBUTING COMPANY,
OLIVER FINNIE GROCERY COMPANY,
HALL GROCERY COMPANY,
ALBERT MACKIE & COMPANY, LTD.,
THE HICKS COMPANY,
W. D. CLEVELAND & SONS,
RAPPIDES GROCERY COMPANY,
Interveners,

By EDGAR WATKINS,
Attorney.

HOKE SMITH,
Washington, D. C., and
EDGAR WATKINS,
Atlanta, Ga.,
Attorneys for Interveners.

139 *Duly sworn to by Joseph H. McLaurin; jurat omitted in printing.*

In Supreme Court of District of Columbia

Petition to intervene

Filed September 19, 1921

* * * * * * *

To the honorable Judges of the Supreme Court of the District of Columbia:

The petition of the National Wholesale Grocers' Association of the United States, by Breed, Abbott & Morgan and Harry W. Van Dyke, its attorneys, respectfully shows:

1. Your petitioner, National Wholesale Grocers' Association of the United States, is a voluntary and unincorporated association, having its principal place of business in New York City, in the State of New York, composed of upwards of fourteen hundred individuals, partnerships, and corporations engaged in the wholesale grocery business throughout the United States, and makes this petition for leave to intervene in the above-entitled case.

2. This proceeding was commenced by the United States of America against the defendants for the purposes, among others, of

enjoining defendants from continuing any contract, combination, or conspiracy in restraint of trade or commerce in the purchase of livestock or other products handled by them and of restraining defendants from monopolizing or attempting to monopolize trade or commerce in such products; and of requiring defendants to divest themselves from dealing in food substitutes or unrelated commodities as specifically defined in the petition, which unrelated commodities included a general line of grocery products such as are usually dealt in by wholesale grocers in the United States.

3. Thereafter, on February 27, 1920, a decree was entered in this court on the written consent of all the defendants wherein and whereby, among other things, said defendants were perpetually enjoined and restrained from manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in such food substitutes or unrelated products consisting of general line of grocery products. Such food substitutes and unrelated products are generally dealt in by all wholesale grocers and in particular by the members of your petitioner's association.

4. Prior to the date of said decree and prior to the institution of said proceeding, various investigations were made by congressional committees, by the Federal Trade Commission, and the De-
140 partment of Justice, all of which showed or tended to show, in accordance with the findings of such investigating bodies, that said defendants in this action were guilty of violations of the act of July, 1890, known as the "Sherman Act," and the act of September 26, 1914, known as the "Federal Trade Commission act," and that such actions created or tended to create a monopoly in the sale of food products.

5. Prior to the entry of said decree your petitioner, although not a party to said decree, took part in conferences with the representatives of the Department of Justice leading up to the entry thereof, inasmuch as the actions of defendants injuriously affected the business of the members of your petitioner's organization and the restraints in the decree were in part for the purpose of terminating and did tend to terminate said injurious acts and the differences and controversies between the defendants and the members of your association were to a large extent adjusted by reason of the entry of said decree.

6. On or about July 1, 1919, and prior to the entry of said decree, your petitioner instituted a certain proceeding before the Interstate Commerce Commission against the Director General of Railroads and the principal railway carriers in the United States, being known as Docket No. 10745 on the docket of the Interstate Commerce Commission, in which proceeding your petitioner alleged that the defendants herein were receiving certain unjust, unreasonable, and preferential rates and privileges in violation of the acts to regulate interstate commerce. Thereafter the principal defendants herein intervened in said proceeding and having consented to the decree entered by said court, offered said decree in evidence in support of a

defense urged by them that having abandoned the grocery businesses in which they had heretofore embarked they would no longer be in competition with the members of your petitioner's association. In the opinion of the Interstate Commerce Commission dated June 22, 1921, and reported in volume 62, p. 375, of the opinions of said commission in denying certain of the relief sought by your petitioner, said commission emphasizes the entry of the decree in this case as granting your petitioner to a large extent the relief sought.

7. Your petitioner respectfully represents to this court that to modify or in any way lessen the restraints contained in said decree entered in this case would result in defendants obtaining a substantial control of the business of dealing in food products in the United States and would tend to a monopolization by the defendants of such business. Your petitioner believes that such result would be inimical and injurious to the welfare of the public and that in particular the members of your petitioner's association, apart from such public interests have a direct and special interest and that such modification would tend to the destruction of your petitioner's business.

Wherefore, your petitioner prays that an order may be granted permitting your petitioner to intervene in this proceeding without prejudice to the proceedings heretofore had therein and that
141 your petitioner be notified of all further proceedings herein and have such other and further relief as may be just in the premises.

NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES,
By BREED, ABBOT & MORGAN,
32 Liberty Street, Borough of Manhattan, New York City,
HARRY W. VAN DYKE,
Woodward Building, Washington, D. C.,
Attorneys for Petitioner.

Duly sworn to by Sylvan L. Stix; jurat omitted in printing.

142 In Supreme Court of District of Columbia

Motion to set aside order granting leave to intervene, &c.

Filed September 24, 1921

* * * * * * *

Comes now the petitioner, the United States of America, in the above-entitled cause and moves the court to set aside and vacate the order heretofore entered, without notice and without prejudice, by this honorable court on the tenth day of September, 1921, in this cause, ordering that the Southern Wholesale Grocers' Association, Henry G. Sears Company, Mason Ehrman & Company, John Hoffman & Sons Company, J. M. Radford Grocery Company, Southern

Distributing Company, Oliver Finnie Grocers' Company, Hall Grocery Company, Albert Mackie & Company, The Hicks Company, W. D. Cleveland & Sons, and Rapides Grocery Company have leave to intervene and become parties herein.

PEYTON GORDON,
United States Attorney.
HERMAN J. GALLOWAY,
Special Assistant to the Attorney General,
Attorneys for the United States of America.

In Supreme Court of District of Columbia

Amended petition of Southern Wholesale Grocers' Association and order

Filed October 13, 1921

* * * * * * *

To the honorable the Judges of said Court:

Come now the Southern Wholesale Grocers' Association, Henry G. Sears Company, John Hoffman and Sons Company, Mason Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing Company, Hall Grocery Company, Albert Mackie & Co. Ltd., The Hicks Co., W. D. Cleveland & Sons, Rapides Grocery Company, and the Oliver Finnie Grocery Co., and by leave
143 of the Court amend their intervention filed herein on September 10, 1921, and for amendment and paragraphs of said intervention as follows:

21

Interveners other than the Southern Wholesale Grocers' Association are engaged, as aforesaid, in selling grocery items, among which items they are engaged in selling those things prescribed in paragraphs 4 and 5 of the decree entered herein on the 27th day of February, 1920. Southern Wholesale Grocers' Association is composed of members, as aforesaid, whose members are likewise engaged in buying and selling said commodities. Interveners other than Southern Wholesale Grocers' Association and the members of the Southern Wholesale Grocers' Association buy said commodities and have them shipped in interstate commerce, and each of the businesses of said interveners and said members is in selling said commodities for shipment among the States of the United States. Said interveners and the members of said association, as well as the defendants herein, are engaged in interstate commerce and these interveners and the members of the Southern Wholesale Grocers' Association here now make as their own the allegations of the original petition filed by the United States herein and interveners say that the violations alleged in the original petition herein of the antitrust laws of the

United States are such violations as would cause loss and damage to the interveners other than the Southern Wholesale Grocers' Association, and would cause loss and damage to the members of the Southern Wholesale Grocers' Association, and interveners, composed of corporations and an association, are under section 16 of the Clayton Act, entitled to sue for the injury and damage threatened against them by the acts alleged against the defendants in the original petition herein.

22

Interveners further show that the petition filed by the United States in this cause alleges violations of the anti-trust laws, and interveners are informed and believe, and believing so allege, that prior to the granting of the injunction in this cause on the 27th day of February, 1920, defendants jointly and in cooperation were selling the commodities described in paragraphs 4 and 5 of said decree heretofore entered in this cause, in interstate commerce, and in the manner and method of conducting said business, as alleged in the original petition herein, were guilty of violations of the antitrust laws of the United States, which violations threatened loss and damage to interveners and to the members of the Southern Wholesale Grocers' Association. Interveners here make part of this intervention the allegations of the original petition filed herein and say that if the injunction heretofore granted in this cause should be modified so as to permit defendants to return to the status existing prior to the injunction of February 27, 1920, defendants would continue their violations of the antitrust laws to the injury and damage of interveners.

144 23

Interveners further show that under section 16, of the Clayton Act, which said act is one of the antitrust acts of the United States, they had the right and each of them had the right at the time the United Sates filed its petition herein to ask and receive injunctive relief. If the filing of this action gives this court exclusive jurisdiction of all questions arising out of the violations of the antitrust laws alleged in the petition herein, interveners could not now file an independent suit. If the right remains to file an independent suit, then to file such suit in behalf of interveners and others similarly situated would involve a multiplicity of suits. Whatever the rights of interveners and other wholesale grocers they have a direct interest in this litigation and in the subject matter of this action, one special to themselves, differing from that of the general public, and under the laws and the principles of equity, and under the equity rules binding on this court, interveners are proper parties to this proceeding. Only in this cause and court where jurisdiction has been obtained of the subject matter and of the defendants can there be full and adequate relief to interveners and others with like interest.

Interveners have been informed, and believe, and believing so allege, that the Department of Justice, representing the United States herein, has in contemplation a modification of the decree of February 27, 1920. Interveners are further informed, and believe, and so allege, that said Department of Justice has prepared a motion to modify said decree, which motion it has served upon the defendants herein, and that the defendants have either agreed to the motion or agreed not to oppose the motion. Interveners are unable fully to set out said motion because upon application to Mr. H. J. Galloway, special assistant to the Attorney General, for opportunity to see said motion, they were denied such opportunity; but interveners on information and belief allege that the purpose of said motion is for such a modification of said decree as would greatly damage and injure these interveners, and would substantially vacate said decree in so far as it prevents the defendant from engaging in the sale of commodities unrelated to the principal business of defendant, in which commodities interveners, except the Southern Wholesale Grocers' Association, are engaged in selling. Interveners further show on information and belief that it is proposed especially to strike from said decree all of paragraph four thereof, and the parts of other paragraphs having a purpose similar to that of paragraph four. The department heretofore, on the 9th day of September, 1921, permitted counsel for interveners to state generally the objections of interveners to a modification of said decree, and interveners are now informed, and being informed believe, and allege, that said department proposed to permit them a hearing before the Honorable Herbert J. Galloway, a special assistant to the Attorney General, and the solicitors,
145 respectfully of the Departments of Agriculture and of Commerce and Labor. Interveners are advised, and being so advised, allege that the said board before which it is proposed to grant interveners a hearing, is a nonjudicial board, with no power, authority or jurisdiction to hear or decide the rights of these interveners; that said board could not subpœna or swear witnesses, and that only in this court and cause can the facts necessary to a proper determination of the issues herein be adduced, and interveners here and now offer at such time and place as the court may set, to produce witnesses who will testify to the facts, material and necessary, for the court to know before determining what modification, if any, should be permitted of said decree. The proposal of the Department of Justice to grant the form of a hearing as aforesaid to interveners, and to determine for itself by an agreement with the defendant what modification shall be made in said decree, denies interveners that due process of law and that hearing which they are entitled to have, and which they can not obtain except before this court and in this cause.

Wherefore, interveners pray as in their original intervention, and that this their amended intervention be allowed and filed, and that

they may have notice and opportunity to be heard on any and all motions hereafter filed with the right to answer such motions or demur thereto as they may be advised.

SOUTHERN WHOLESALE GROCERS' ASSOCIATION,
HENRY G. SEARS COMPANY,
JOHN HOFFMAN & SONS COMPANY,
MASON EHRMAN & COMPANY,
J. M. RADFORD GROCERY COMPANY,
SOUTHERN DISTRIBUTING COMPANY,
ALBERT MACKIE & COMPANY, LTD.,
THE HICKS COMPANY,
W. D. CLEVELAND & SONS,
RAPHES GROCERY COMPANY,
OLIVER FINNIE GROCERY COMPANY,
Interveners,

By EDGAR WATKINS,
Attorney.

HOKE SMITH,
EDGAR WATKINS,
Attorneys for Interveners.

146 Duly sworn to by Joseph H. McLaurin; jurat omitted in printing.

It is ordered that the above and foregoing amendment to the intervention filed by Southern Wholesale Grocers' Association et al., on the 10th day of Septemiser, be and the same is allowed without prejudice to the pending motion.

WENDELL P. STAFFORD, *Judge.*

In Supreme Court of District of Columbia

Memorandum of decision on motion to strike out, &c.

Filed November 1, 1921

* * * * * * *

Without deciding that petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petition it is fair and just that they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it, for the following reasons, when taken together:

1. The decree was, in part, at least, the fruit of their own efforts;

2. They abandoned the pursuit of other remedies in reliance upon this decree;

3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf;

4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection;

5. The decree ought not to be modified unless the court is convinced that the public interest requires it; and the petitioners fairly represent a large and well-defined portion of the public whose position will enable them, and whose interest will prompt them, to present to the court facts or reasons which, among others, the court ought to hear and consider before allowing the decree to be changed.

This decision must not be understood as opening the door to all would be interveners who may consider themselves interested in the decree or any change therein, but as strictly limited to the facts alleged in this petition, which are in law admitted by the motion to strike out.

WENDELL P. STAFFORD, *Justice.*

147 In Supreme Court of District of Columbia

Order overruling motion to strike out

Filed November 5, 1921

* * * * * * *

The motion of the plaintiff to strike out the intervening petition of the Southern Wholesale Grocers' Association et al. is overruled for the reasons stated in the filed memorandum of decision.

WENDELL P. STAFFORD, *Justice.*

In Supreme Court of District of Columbia

Order allowing intervening petition to be filed

Filed November 5, 1921

* * * * * * *

The petition of the National Wholesale Grocers' Association of the United States for leave to intervene herein is granted for the same purpose and to the same extent as the court has already allowed the intervention of the Southern Wholesale Grocers' Association, namely, to be heard in opposition to any proposed change in the consent decree which would deprive the interveners of the protection now secured by said decree.

WENDELL P. STAFFORD, *Justice.*

In Supreme Court of District of Columbia

Petition in intervention

Filed November 8, 1921

* * * * * * *

To the honorable Judges of the Supreme Court of the District of Columbia:

Your intervener, National Wholesale Grocers' Association of the United States, by Breed, Abbott & Morgan and Harry W. Van Dyke, its attorneys, respectfully shows:

I. Your petitioner, National Wholesale Grocers' Association of the United States, is a voluntary and unincorporated association having its principal place of business in New York City, State of New York, composed of upwards of 1,400 individuals, partnerships, and corporations engaged in the wholesale grocery business throughout the United States.

II. Your intervener represents that the decree entered herein on February 27, 1920, was entered for the purpose of restraining and terminating certain contracts, combinations, and conspiracies in restraint of trade or commerce on the part of defendants in the sale of food products and for the purpose of terminating certain monopolizations in such sale of food products on the part of defendants. Such decree prohibited defendants from dealing in
148 certain lines of grocery products and thereby, in large part, terminated certain advantages and preferences enjoyed by the defendants in competition with the members of your intervener's association in the sale of food products. In order to terminate such preferences your intervener had previously instituted a proceeding before the Interstate Commerce Commission against the Director General of Railways and principal railway carriers known as Docket No. 10745 on the docket of the Interstate Commerce Commission and in determining such proceedings, said Interstate Commerce Commission, in its opinion which is reported in volume 62, page 375, of the opinions of said commission, denied certain of the relief sought by your intervener on the ground that the entry of the consent decree herein had largely eliminated the competition existing between members of your intervener's association and the defendants herein.

III. Your intervener represents that to modify or any way lessen the restraints contained in said consent decree of February 27, 1920, would result in defendants obtaining a large degree of control of the business of dealing in food products in the United States and would tend to result in a monopolization of such business by the defendants. Your intervener believes that such result would be inimical and injurious to the welfare of the public and that your intervener and the members of your intervener's association have a special and direct

interest and that such modification would tend to the destruction of their respective businesses.

Wherefore your intervener prays that any motion to modify said decree of February 27, 1920, be denied or in the alternative should this court consider any motion to modify said decree that no action be had except on notice to your intervener and after a full hearing.

BREED, ABBOTT & MORGAN,
No. 32 Liberty Street, New York City.
HARRY W. VAN DYKE,
Woodward Building, Washington, D. C.

Duly sworn to by Sylvan L. Stix; jurat omitted in printing.

149 MEMORANDUM.—Motion of California Cooperative Canneries for leave to intervene, notice of hearing, and acknowledgment of service of said motion and notice signed by the attorneys of record for all of the parties to said cause, filed.

In Supreme Court of the District of Columbia

Intervening petition of California Cooperative Canneries

Filed April 19, 1922

The petition of the California Cooperative Canneries respectfully shows as follows:

Paragraph I

Your petitioner, California Cooperative Canneries, is a corporation organized under the laws of the State of California, having its principal office and officers and agents in the city of San Francisco, in the said State of California, and carrying on its business in
150 the said State of California and elsewhere, throughout the United States of America, and in foreign countries. Your petitioner is a fruit growers' cooperative canning organization, and its canneries are owned and operated by its members. Its canneries are located in the counties of Tulare, Stanislaus, and Santa Clara, in the said State of California. The fruit is delivered to the canneries by the growers, and after the expenses of canning are paid, the money received from the sales of the finished product is paid to the growers, except that a small percentage of the receipts is held as a reserve fund, and shares of stock of the corporation are issued to the growers to cover the amount retained. The volume of your petitioner's business is approximately $4,000,000 per annum, and its membership is very large. Your petitioner was originally incorporated in the said State of California under the name of the Producers Warehouse Company, but its name was duly changed to its present name of the California Cooperative Canneries, in accordance with the statutes of the said State of California in such case made and provided. Your petitioner is engaged in intrastate and

interstate and international trade and commerce. A vital requisite to the proper conduct of your petitioner's said business is an efficient, expeditious, and economical system of distribution of its products in the said State of California and in the other States and the Territories of the Union and in foreign countries, in order to prevent an excessive spread of price between the producer and the consumer, and to insure the marketing of its said products.

Paragraph II

Heretofore, to wit, May 9, 1919, your petitioner, under its former name of Producers Warehouse Company, entered into a certain written contract with the defendant Armour & Company, a corporation organized and existing under and in virtue of the laws of the State of New Jersey, with its principal office in the city of Chicago, in the State of Illinois, which contract provided, among other things, that it should be and remain in full force and effect from the date thereof until January 1, 1929, and which contract was and is in the words and figures following:

This agreement, made and entered into this 9th day of May, 1919, by and between the Producers' Warehouse Company, a corporation of the State of California, with principal office in San Francisco, California, first party, and Armour & Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with principal office in the city of Chicago, Illinois, second party, witnesseth:

1. First party hereby agrees to sell and deliver to second party, and second party agrees to purchase and receive from first party, all the California canned fruits required by the business of second party and Armour and Company, a corporation of the State of Illinois, during the life of this contract, except that purchased by second party from the California Growers Association under its contract with that association, dated May 7, 1919, limited by the capacity of the
151 factories operated by first party. Not later than January 1st of each year second party shall furnish to first party a list showing the quantity of the various canned fruits which will be required by the business of said companies from the pack of the current calendar year, which list, in addition to the quantity, shall show the size of the container, the brand, grade, and variety. All containers shall be furnished by first party.

2. Said goods shall be shipped by first party from time to time and to points designated by second party, as ordered, in carload lots, delivered f. o. b. cars at points in California, taking rates not higher than the rates from intermediate rate points in California. Goods to be shipped locally to points in California shall be delivered f. o. b. cars at factories, it being understood, however, that whenever possible such goods shall be furnished from those factories located nearest to the point of destination.

3. The price to be paid by second party for said goods delivered as aforesaid during any year shall be the prices used by the California Packing Corporation in confirming its sales to the trade generally, provided, however, that first party shall not be required to sell any particular grade of goods to second party at prices which, less the discounts mentioned below in this paragraph and paragraph four hereof, are less than the fair value of the fruit plus its actual cost of manufacture, and in case the parties are unable to agree upon a price to be paid for such grades, second party shall not be required to accept the same. Said prices shall be subject to a discount of five per cent (5%) plus a further discount for cash of one and one-half per cent (1½%).

Subject to the provision aforesaid, it is the understanding that the first party shall meet the competition of the California Packing Corporation with respect to prices and should the California Packing Corporation during any year in good faith reduce its prices to the trade generally for that year, and make such prices retroactive, or should first party make prices to others lower than those of the California Packing Corporation, it is agreed that second party shall have the benefit of such reduced prices, whichever are the lower, with respect to all goods unshipped and also all goods which second party has on hand unsold at any of its places of business. Such reduced prices—either those of the California Packing Corporation or those of first party, whichever are the lower—shall be the prices which second party shall pay first party for such goods less the discounts mentioned above. The prices for goods intended for shipment to foreign countries shall be the prices of the California Packing Corporation for such goods, less the discounts herein specified, provided the net prices are not less than the fair value of the fruit plus the actual cost of manufacture.

First party shall have the right after December 31st of each year of selling any goods which it has on hand and not taken by second party, at any price it may see fit, without affecting the prices paid by second party for fruit therefore delivered to it, provided first party first offers such goods to second party.

Sight drafts are to be drawn by first party on second party
152 at its Chicago office covering shipments, payable in New York or San Francisco exchange ten days from date of invoice. The drafts shall be accompanied by the original bill of lading and invoice, and copy of the bill of lading and copy of the invoice shall be sent to second party's branch house to which the particular shipment is destined.

4. Any goods remaining unshipped and subject to the orders of second party on December 31st of each year shall be billed on that date and drafts drawn against warehouse receipts for the goods, and second party agrees to pay said drafts within ten days from receipt of documents. Where goods remain in storage after December 31st of any year, the storage charges are to be the regular lawful rates,

and the insurance is to be taken care of by second party. First party shall not be required to store any goods for second party for a period longer than four months after December 31st of any year.

A further discount of one-half of one per cent is to be allowed to cover claims for swells. No further allowance shall be made on this account, excepting in case of some product which may show defective processing at time of delivery, and be promptly reported for investigation. If an adjustment cannot be agreed upon the goods shall be rejected by second party and accepted by first party and the price paid therefor, plus freight charges, refunded to second party.

5. Second party shall be at liberty to increase or decrease the quantity of products specified in the lists above referred to for each year to an amount not exceeding ten per cent (10%), provided notice thereof is given first party by June 1st of each year, and provided also that the change in quantity shall be in direct proportion on all of the varieties in said lists, excepting as may be hereafter agreed upon.

6. The labels required for goods covered by this contract shall be supplied and affixed by first party. On or about January 1st of each year first party shall order sufficient labels to cover second party's requirements of canned fruits as shown in the lists above mentioned and such additional labels as second party may specify at the lowest prices obtainable, subject to second party's approval. All such labels shall be stored by first party at their expense in suitable storage and under warehouse receipts issued to second party, and shall be covered by first party, with insurance in reliable insurance companies payable to second party. Second party shall pay for all such labels as purchased, but first party shall repay second party therefor the actual cost thereof as they are used by first party in labeling the goods intended for second party under this contract, the amount thereof to be deducted by second party from the invoices covering such goods. The freight and expense of handling the additional labels above specified shall be borne by second party.

The designs for all labels shall be furnished by second party. First party shall furnish a supply of box plates for printing the heads of cases in one color in designs satisfactory to second party.

7. Should any question arise as to the quality or condition of the products delivered under this contract, owing to any error or negligence on the part of the first party, the second party agrees to
153 notify first party promptly upon the examination of the products and a determination of their quality or condition, and first party shall be given full opportunity for the inspection of the goods, and second party shall not make any disposal of the same to the detriment of the first party. Disagreement as to any matter of fact arising out of this contract to be settled by arbitration. Buyer and seller each to select one arbitrator, who, if unable to agree, shall jointly select a third. The decision and award of a majority of said arbitrators shall be binding and complied with by all parties hereto.

The party against whom decision is rendered shall pay arbitration fees and expenses incurred. If decision is rendered that seller has complied with contract, invoice, if unpaid, shall become due and payable at once. When decision is rendered against seller, arbitrators shall determine and fix the amount of allowance, which amount shall be deducted from the invoice, and the correct net amount paid immediately. If payment shall already have been made, the amount or allowance awarded shall be immediately refunded.

8. It is agreed that all goods shipped under this contract are to be strictly up to the grades specified in the lists hereinbefore referred to. They are to be of first class quality for the grades sold, sound, wholesome and prepared and packed according to the highest standards of the fruit canning industry. They are also guaranteed by first party to be not adulterated or misbranded within the meaning of the food laws of the United States, as well as the laws of any State, city or municipality, and that they are manufactured in accordance with the Federal child labor act, it being understood, however, that first party is relieved from any responsibility for misbranding, in view of the fact that the labels are to be prepared in accordance with designs and specifications of second party, provided the contents of the containers shall, in all respects, conform to the labels so applied as to statements regarding the quality of the goods, weights, etc. In view of the changing character of State and municipal regulations, it is understood, however, that where the requirements of the Federal food and drug acts have been met, any variations or local peculiarities arising under the municipal food and health regulations shall not relieve the buyer of contractual obligations, or be considered a breach of warranty. Second party shall have the right to have its representatives present at any or all of first party's canning factories for the purpose of inspecting the canning of fruits intended for second party under this contract.

9. The first party shall advise the second party from time to time as to market and crop conditions and shall assist the second party in every reasonable way to further its sales.

If either party hereto finds itself unable to perform any of the obligations of this contract by reason of fires, strikes, or other causes beyond its control, the performance of the contract in such respect is to be suspended until a reasonable opportunity is afforded to remove the cause of such suspension, and in case governmental action materially interferes with the performance of this contract by second party, then and in that case it shall have the right to cancel and
154 terminate this agreement by giving sixty days' written notice to first party of its intention so to do, and shall not be held liable for any loss resulting therefrom. First party shall not be liable for the failure of transportation companies to furnish cars or transportation facilities.

In case of short pack, by reason of which the seller is unable to make full delivery of any of the grades specified, it is agreed that the deliveries are to be prorated.

10. The first party agrees to supply f. o. b. factory free of cost to the second party, a reasonable supply of such samples as the said second party may consider necessary for the proper development of the business. The second party agrees to pay freight or express charges on such samples.

11. This contract shall be subject to all the effective rules and regulations of the Federal Food Administration, the Federal Trade Commission and other Federal agencies.

12. The agreement made and entered into on the fifth day of October, 1918, by the first party hereto and the California Growers Association, a nonprofit, nonstock Corporation of the State of California, with its principal office at Los Angeles, California, as first parties thereto and the second party hereto as the second party thereto is hereby cancelled so far as said contract affects the parties hereto.

13. This agreement shall not be assigned by either party hereto without first securing the written consent of the other and shall be and remain in full force and effect from the date hereof until January 1, 1929.

In witness hereof the parties hereto have caused this instrument to be executed in duplicate by their duly authorized agents in this behalf and day and year first above written.

PRODUCERS' WAREHOUSE COMPANY,
JAMES MADISON,
President.
ARMOUR AND COMPANY,
ARTHUR MEEKER,
Vice President.

Compared.
R. G. SPENCER.

I hereby certify that this is a true and correct copy of the original contract between the Producers Warehouse Company, now known as the California Cooperative Canneries and Armour Co.

ALBERT HAENTZE, *Secretary.*

Paragraph III

Your petitioner further avers that by reason of the aforesaid contract between it and the defendant Armour & Company, it has a special legal interest in this litigation and in the subject of this suit, and is entitled to assert its rights by intervention herein, and is a real party in interest.

153 Paragraph IV

Your petitioner further avers that under its aforesaid contract with the defendant Armour & Company, the latter, prior to the entry herein of the injunction decree of February 27, 1929, took approximately 52 per cent of your petitioner's entire output of canned fruit, at a greater profit to the producer and a smaller cost to the consumer,

by reason of the fact that the said defendant Armour & Company owned and operated one of the most efficient, expeditious, and economical systems of distribution of food products, including the product of your petitioner, that has ever existed in this or any other country, and the value of the aforesaid contract to your petitioner was very great, and the benefit to the ultimate consumer was even greater. The direct and immediate effect of the aforesaid injunction decree was not merely to impair but absolutely to destroy the aforesaid contract, if the said decree be valid, but whether valid or not, your petitioner alleges that after its entry, the said defendant Armour & Company notified your petitioner that it could not further keep the said contract by reason of the said decree, and declined to proceed further with the performance thereof, whereby the said defendant breached the said contract, and caused irreparable injury to your petitioner, and ever since has continued, and still continues, so to do. The loss caused and to be caused to your petitioner by reason of the refusal of the defendant, Armour & Company, to perform the said contract, on account of the said decree, is incalculable, and can not be compensated by a mere money judgment, and your petitioner is therefore without any plain, adequate, or complete remedy at law, and is entitled to invoke the aid and assistance of this court to secure the relief which is necessary and which should be granted to protect its special interest in the premises.

Paragraph V

Prior to the filing of this suit and the entry of the said decree the defendant, Armour & Company, and the other defendants, at a large expense, had carefully and skilfully built up and owned and operated most efficient, expeditious, and economical systems of distribution of food products, including meats, fruits, and other food commodities throughout this country and abroad, and in such distribution the defendants were not only in competition with each other but also in competition with other distributing concerns, including particularly members of the wholesale grocers associations in the United States, among which the most active were the Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association of the United States, both of which associations, together with certain affiliated wholesale grocery concerns, have already been given leave to intervene in this suit, and have intervened herein, for the protection of their alleged special interest in the subject matter of this suit, as will more fully appear by reference to the record and proceedings herein.

156 Paragraph VI

Your petitioner further avers that the said decree is void for want of jurisdiction or power apparent on the face of the record, for reasons herein set forth, and your petitioner further avers that if the said decree be apparently valid on the face of the record, it is in-

valid because its direct and immediate effect was to restrict and not promote competition in the distribution of food commodities in favor of the wholesale grocers' associations, and particularly the aforesaid Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association of the United States, with the result that the profit of the producer has been greatly diminished and the cost to the consumer has been greatly increased. Your petitioner further alleges that the prevention of competition with its members constitutes the real interest which the aforesaid wholesale grocers seek to continue by intervention herein, and is the real and only reason why they seek to avoid the modification or vacation of the aforesaid injunction decree, in that the elimination of the defendants from the business of handling and distributing food commodities other than meats and related products, as their only real competitors, wholly relieved them from all substantial competition, and left the entire field of the distribution of such commodities open to the members of such associations alone, and thus effected a monopoly thereof in their favor. However, if the said decree be not void, it is so gravely improvident and erroneous that it should be vacated in its entirely, or radically modified. The said decree is merely interlocutory and not final, and is expressly made subject to the continuing power of the court to vacate or modify it at any time and for any sufficient reason.

Paragraph VII

Your petitioner further avers that the aforesaid injunction decree was passed without any notice whatever to it, and without any opportunity whatever afforded to it to be heard in opposition thereto, and that ever since your petitioner became cognizant thereof it has been actively engaged in various ways and before various tribunals and officials in efforts to have the plaintiff and/or the defendants ask the vacation or modification thereof, but without success. In addition, your petitioner alleges that the plaintiff and defendants, and particularly the defendant Armour & Company, were cognizant of the aforesaid contract between your petitioner and the said Armour & Company, and of the rights of your petitioner thereunder and of the aforesaid effect of the said decree thereon. On information and belief, your petitioner further says that many other similar contracts were likewise affected by the said decree.

Paragraph VIII

Subsequent to the entry of the said decree, your petitioner learned, and on information and belief now avers, that during the
157 month of December, 1919, and prior to the 25th day of the said month, the Attorney General of the United States secured from the defendants the execution of a certain memorandum evidencing their agreement to the matters and things therein set forth, which memorandum constituted the basis of the filing of this suit and the

entry of the aforesaid decree. Heretofore, to wit, January 7, 1920, the then Attorney General appeared before the United States Senate Committee on Agriculture and Forestry, in the Senate Office Building, and among other things, stated as follows:

I have here a memorandum signed by the representatives of the five great packers, as evidence of their agreement to its terms. This memorandum is a complete statement of the plan of adjustment which the Department of Justice proposes to put into effect. It provides a method by which a decree shall be entered, and embodies the stipulations of that decree.

The aforesaid memorandum, signed by the representatives of the five great packers, namely, the defendants Swift & Company, Armour & Company, Morris & Company, Wilson & Company, and Cudahy Packing Company, was and is in full as follows:

1. A suit in equity will be brought by the Government against the following corporations and individuals, to wit:

Armour defendants

Armour & Co. (Illinois). J. Ogden Armour.
Armour & Co. (New Jersey). Charles W. Armour.
Armour & Co. (Kentucky). A. Watson Armour.
Armour & Co. (Texas). Laurence H. Armour.
Armour & Co. (Ltd.) (Louisiana). Arthur Meeker.
Anglo American Provision Co. (Illinois). R. J. Dunham.
Colorado Packing & Provision Co. (Colorado). F. Edson White; George M. Willetts.
Fowler Packing Co. (Maine). Frederick W. Croll.
Hammond Packing Co. (Illinois). George B. Robbins.
New York Butchers' Dressed Meat Co. (New York).
Atlantic Hotel Supply Co.

Swift defendants

Swift & Co. (Illinois). Louis F. Swift.
Swift & Co. (West Virginia). Edward F. Swift.
Swift & Co. (Inc.) (Kentucky). Charles F. Swift.
Swift & Co. (Maine.) Harold H. Swift.
Swift & Co. (Ltd.) (Louisiana). Gustavus F. Swift, jr.
Swift Beef Co. (Maine). Alden B. Swift.
United Dressed Beef Co. (New York). George H. Swift.
J. J. Harrington & Co. (Inc.) (New Jersey). Laurence A. Carton.
Bimbler Co. (New Jersey). Frank S. Hayward.
G. H. Hammond Co. (Michigan). Charles A. Peacock.
158 Omaha Packing Co. (Kentucky). Wilfred W. Sherman.
Plankiton Packing Co. (Wisconsin). Wellington Leavitt.
Beef & Supply Co. (Maine). William B. Traynor.
E. K. Pond Packing Co. (Illinois).
Van Wagenen & Schickhaus Co. (New Jersey).

Western Packing Co. (California).
Hammond Beef Co. (Michigan).
Omaha Meat Co. (California).
Canfield Commission Co. (New Jersey).
H. C. Derby Co. (New York).
Metropolitan Hotel Supply Co. (New York).
Vermont Supply Co.
Hotchkiss Beef Co.
F. & C. Crittenden Co.
George Nye Co.
H. L. Handy Co.
Swift Coates Co.
Andrews, Swift & Co.
New England Dressed Meat & Wool Co.
North Packing & Provision Co.
Sperry & Barnes Co.
John P. Squire Co. (Maine).
John P. Squire Co. (Inc.) (Massachusetts).
John P. Squire Co. (Inc.) (Rhode Island).
Springfield Provision Co.
White Peavy & Dexter Co.

Morris defendants

Morris & Co. (Maine). Edward Morris.
Morris Packing Co. (Maine). Nelson Morris.
Morris & Co. (New Jersey). L. H. Heymann.
Morris & Co. (Ltd.) (Louisiana). C. M. McFarlane.
Morris & Co. (Pennsylvania). H. A. Timmins.
Brooklyn Beef & Provision Co.
Condit Beef & Provision Co.
Corwin, Wilde Co.
Donnelly & Co. (Inc.)
National Hotel Supply Co.
Chamberlain & Co. (Inc.)
J. M. Wilson & Co.
Middletown Beef & Provision Co.
Glenn & Anderson Co.

Wilson defendants

Wilson & Co. (Inc.) (New York). Thomas E. Wilson.
Wilson & Co. (Inc.) (New Jersey). Arthur Lowenstein.
Wilson & Co. (Inc.) of California (Nevada). Jacob Moog.
Wilson & Co. (Oklahoma). A. L. Smith.
Wilson & Co. (Inc.) (Louisiana). V. D. Skipworth.
159 South Dakota Provision Co. J. A. Hamilton.
Gotham Hotel Supply Co. George D. Hopkins.
Standard Beef Co. A. E. Peterson.

O'Mara Co. G. H. Cowan.
Packing Co. William C. Buethe.
Lea Co. (Inc.). C. F. Burrell
ppi Packing Co. James C. Good.
Gregson Co. (Delaware).
Reymann Co.
d Provision Co.
Products Corporation.

Cudahy defendants

Packing Co. (Maine). Edward A. Cudahy, sr.
Packing Co. (Nebraska). Edward A. Cudahy, jr.
Packing Co. (Alabama). Guy C. Shephard.
Packing Co. (Ltd.) (Louisiana). John E. Wagner.
Packing Co.
Anderson.
Strauss.
E. Wilhelm.
Marples.
Meat Co.
Packing Co.
Meat & Packing Co. F. L. Washburn.

strict court of the United States as the Attorney General
, by a bill alleging such facts and circumstances as the
General may deem necessary and material, including the
tivities and businesses as to which the defendants, or some
re to be enjoined as hereinafter specified, to wit: (1) The
of capital stock or other interests in (a) public stockyard
mpanies; (b) stockyard terminal railroad companies; (c)
market newspapers or journals; (2) the manufacturing,
elling, distributing, or otherwise dealing in any of the
s described in Schedule A hereto annexed; (3) the own-
operation, either by concert of action or severally, of
markets; (4) the ownership of capital stock or other
public cold-storage warehouses.
efendants will then answer with such denials and affirma-
relating to the allegations of the bill as they may be
material and necessary.
upon a stipulation shall be made by and between the
said action, by the terms of which it shall be agreed that
on consent without any findings of fact shall be entered in
, which consent shall be in form substantially the same
e B, hereto annexed. Said stipulation shall recite that
ation and individual defendants, while maintaining the
ir answers and asserting their innocence of any violation
w in fact or intent, nevertheless, desiring to avoid every
arance of placing themselves in a position of antagonism
Government, consent to the making and entry of a decree

embodying substantially the terms and provisions hereinafter enumerated, but that the stipulation shall not constitute or be considered as an admission and the rendition or entry of the decree or the decree itself shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States.

4. The decree, in addition to the foregoing reservations respecting the effect thereof, and including substantially the recitals contained in the stipulation and referred to in the foregoing section, shall be in substance as follows:

(a) An injunction perpetually enjoining the corporation defendants from, directly or indirectly, maintaining or entering into any contract, combination, or conspiracy with each other or with any other person or persons in restraint of trade or commerce among the several States, or from, directly or indirectly, monopolizing or attempting to monopolize or combining or conspiring with each other or any other persons to monopolize any part of such trade or commerce.

(b) An injunction perpetually enjoining and restraining the defendants, and each of them, from owning any capital stock or other interest, either directly or indirectly, in any public stockyard market companies, or in any stockyard terminal railroad companies, or in any stockyard market newspapers or journals, except in such circumstances as are provided for in subdivision G of paragraph 4 hereafter, and upon such conditions as may be approved by the court; and enjoining and restraining them from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them or to any of their officers, agents, servants, or employees, for the use and benefit of the corporation defendants, or any of them, capital stock or other interests in any public stockyard market companies, stockyard terminal railroad companies, or stockyard newspapers or journals.

(c) An injunction perpetually enjoining and restraining the corporation defendants, and each of them, their successors and assigns, from owning any capital stock or other interest in any corporation, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the commodities described in groups 1 and 2 of Schedule A hereto annexed; and further perpetually enjoining and restraining said corporation defendants from, in the United States, directly or indirectly, engaging in or carrying on, either by concert of action or otherwise, either for the domestic trade or for export trade, the manufacturing, jobbing, selling, transporting, and distributing, or otherwise dealing in any of the commodities described in said Schedule A, hereto annexed, except as therein provided; said injunction shall perpetually enjoin and restrain the individual defendants (1)

161 from individually or jointly owning 50 per cent or more of the voting stock in any corporation, or a half interest or more in any firm or association which, in the United States, may

be in the business of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the commodities enumerated in group 1 of said Schedule A; (2) from adopting any device or arrangement which, by reason of their relation to the corporation defendants, or any of them, would have the purpose or effect of giving to such business or dealing in the articles mentioned in group 1 of Schedule A in which such individuals may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing systems.

(d) An injunction perpetually enjoining and restraining the defendants, and each of them, directly or indirectly, from owning, operating, or conducting, either by concert of action or severally, retail meat markets in the United States, but providing that said injunction shall not apply to the retail markets located at the companies' plants and maintained by the companies primarily for their own employees.

(e) An injunction perpetually enjoining and restraining the defendants, and each of them, from owning, directly or indirectly, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States. Nothing in this subdivision shall be construed to prevent the defendants, or any corporation owning or operating, or from themselves owning *any corporation owning or operating, or from themselves owning* or operating the public cold-storage warehouses now maintained by them, or any of them, at stockyards where they, or any of them, have packing plants; nor to prevent any of the defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they, or any of them, may be interested; nor from renting space in any cold-storage warehouse, directly or indirectly, owned or leased by any of them, to the public; nor from storing commodities for the public whenever such space is not required or needed in good faith for their own use.

(f) An injunction perpetually enjoining and restraining the corporations defendants, and each of them, from engaging, either directly or indirectly, in the United States in the business of buying, collecting, selling, transporting, distributing, or otherwise dealing in fresh milk and cream; provided, however, that nothing herein contained shall prevent such defendants or their subsidiaries from buying, collecting, and transporting fresh milk and cream to be used by them, or any of them, in manufacturing condensed or evaporated or powdered milk, or oleomargarine, or other butter substitutes, or butter, ice cream, cheese, or buttermilk, or to be used as feed or in combination with any commodity not specifically mentioned and described in Schedule A, and, further provided that nothing herein contained shall prevent such defendants from selling or otherwise disposing of milk bought or collected for manufacture when such sale or disposition is necessary to avoid waste.

162 (g) The decree shall provide that within 90 days after the entry thereof such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market newspapers shall file in the court where said action shall be brought, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in (1) public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers; provided, however, that the court may, in the event that it deems such provisions necessary in order to enable the defendants to divest themselves of their interests in stockyards and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any stockyards or stockyard terminal railroads, but no defendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stock yard terminal railroads.

Within such period of time after the entry of said decree and the approval of said plan or plans as the court may determine the defendants shall in good faith completely divest themselves of all such ownership or interests in stockyards, stockyard terminal railroads, and market newspapers. If within the time so fixed the defendants shall not have disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

To the end that the provisions of this decree may be complied with, the approval of the court shall be obtained thereto prior to the final disposition by any of the defendants of their ownership of or interest in (1) public cold-storage warehouses, (2) retail meat markets, and (3) corporations, including departments of the business of any of the corporation defendants (when any of such departments is sold as a going concern), manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in Schedule A.

The decree shall provide that immediately upon entry of the decree the defendants shall commence to dispose of such commodities owned or handled by them as are described in Schedule A (except as therein provided), and which are to be disposed of by them under this agreement, and as required by this agreement shall commence to divest themselves of interests in firms, corporations, and associations dealing in any of the commodities so mentioned or described in Schedule A, and shall continue in good faith to dispose of said commodities and to divest themselves of said interests as rapidly as may be, consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event they shall have completely disposed of said commodities and completely divested themselves of these interests within two years from the date of the entry of this decree. The Attorney General may apply to the court

at any time within said two years to compel the defendants, or
163 any one of them, to make report to the court as to the progress being made by the defendants in divesting themselves of said interests. If within nine months after the entry of said decree the defendants shall not have disposed of their interests in public cold-storage warehouses and retail meat markets the Attorney General may apply to the court for an order specifying the time within which each of said interests shall be disposed of.

(h) The decree shall provide that the purchaser or purchasers of said stockyards shall agree that for a period of at least 10 years they, their successors or assigns, will continue to maintain and efficiently operate said stockyards, and each of them, and such of the corporation defendants as now maintain and operate packing plants at any of said stockyards agree that during the same period of time, they, their successors or assigns, will continue to maintain and operate said packing plants at the points where their respective plants are now located, unless strikes, shortage of supplies, or other causes beyond control of either the purchasers or the defendants shall prevent the carrying out of said agreement.

(i) The decree shall contain a perpetual injunction enjoining and restraining in general terms the corporation defendants, and each of them, from engaging in any illegal trade practices of any nature in relation to the conduct of any business in which they, or any of them, may be engaged.

(j) Nothing in this decree shall be construed to prohibit anything that may be otherwise lawfully done by the defendants, or any of them, in the United States in connection with or for the purpose of export trade, or foreign commerce, or business of the defendants; provided, however, that nothing herein contained shall limit the effect of the injunction provided in subdivision G of paragraph 4 hereof.

(k) The decree shall provide further that nothing therein contained shall be held to preclude the Government from proceeding against any or all of the defendants either civilly or criminally for any violation of any law in connection with the carrying on of the business of buying and selling poultry, butter, eggs, cheese, and milk, or any other business or activity not specifically mentioned by said decree, nor prejudice the Government in any such proceedings; nor shall said decree interfere with or prejudice any legal rights, business, or activity of the defendants, or any of them, not prohibited or covered by said decree.

(l) The decree shall further provide that jurisdiction shall be retained by the court for the purpose of taking such other action or adding at the fact of the decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree; and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree.

(m) The decree shall also contain an injunction perpetually enjoining and restraining the corporation defendants, and each of them, directly or indirectly, through any device or arrange-
164 ment whatsoever, from permitting their branch houses, route cars, or motor trucks to be used for the sale, handling, or dealing in any of the articles or commodities named in Schedule A.

5. Armour & Co., Swift & Co., Morris & Co., Wilson & Co., and Cudahy Packing Co. agree that they will obtain the consent of all the other proposed defendants to the entry of said proposed decree, which consent shall be in form substantially the same as Schedule B, hereto annexed and heretofore referred to.

6. For the purpose of enabling the Government to draw the petition and decree in the proposed suit, and from time to time to ascertain whether the defendants are in good faith carrying out the terms of this decree, the corporation defendants will make full and complete discovery to the Government of all their books and records and will furnish to the Government all information requested in that connection.

THOS. CREIGH,
For Cudahy Defendants.
CHAS. J. FAULKNER, JR.,
For Armour Defendants.
J. P. LIGHTFOOT,
For Wilson Defendants.
HENRY VEEDER,
For Swift Defendants.
M. W. BORDERS,
For Morris Defendants.

Schedule A

Group 1. Commodities which the defendants, both corporation and individual, are prohibited by the terms of subdivisions (c), (g), (i), and (m) of section 4 of this agreement from manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in. This restraint, however, shall not apply to the corporation defendants when purchasing, transporting, or using said commodities (1) as supplies in operating their packing houses or branch houses or other facilities used by them or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences primarily for the benefit of their employees; or (4) in combination with meat.

1. Fresh, canned, dried, or salted fish, including therein, but in no wise limiting the foregoing general description, the following, to wit: Canned oysters; canned mackeral; bulk mackeral; bulk, canned, and cured herring; canned salmon; canned sardines; canned shrimp; and canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in no wise limiting the foregoing description, the following, to wit: Asparagus, navy beans, lima
165 beans, peas, beets, corn, okra, potatoes, tomatoes, celery, garlic, horseradish, and pumpkins.

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in no wise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mince meat, to wit: Ginger, cherries, apple butter, apricots, blackberries, peaches, pineapples, raspberries, currants, figs, gooseberries, oranges, strawberries, apples, prunes, raisins, and dates.

4. Confectionery, sirups, soda fountain supplies and sirups, and soft drinks, not including grape juice, including therein, but in no wise limiting the foregoing general description, the following, to wit: Apple cider, cherry juice, coca cola, creme de menthe, crushed nut frappé, ginger ale, green pineapple sirup, lemon extract, marshmallow topping, orange extract, root beer, vanilla extract, and vin fiz.

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein but in no wise limiting the foregoing general description, the following, to wit: Catsup, chili sauce, cinnamon, cloves, mustard, mustard seed, olives, oyster-cocktail sauce, pepper, pickles, spinaco chili, and tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following to wit: Almonds, pecans, and walnuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits, spaghetti, vermicelli, and macaroni.

Group 2. Commodities which the corporation defendants only are prohibited by the terms of subdivisions (c), (g), (i), and (m) of section 4 of this agreement from manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in. This restraint, however, shall not apply to the corporation defendants when purchasing, transporting, or using said commodities (1) as supplies in operating their packing houses, or branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences primarily for the benefit of their employees; or (4) in combination with meat.

11. Cereals, including therein but in no wise limiting the foregoing general description the following: Grits, oats, hominy, hominy feed, horse feed, brewers' flakes, brewers' grit, brewers' meal, buckwheat, canned hominy, clipped oats, corn grit, ground meal, ground oats, cracked corn, crushed white oats, feed barley, feed meal, feed wheat, rolled oats, standard middlings, and standard spring bran.

12. Grain.

13. Miscellaneous articles, to wit: Cigars, china, furniture, bluing starch, fence posts and wire fences, alfalfa meal, babbitt, bar iron, binding and twine, brass castings for heavy ordnance, brick
166 builders' hardware, bumping posts for railroads, cement, lime, plaster, doors and windows, dried brewers' grains, lath, pitting and fruit handling machinery, roofing, sand and gravel, shingles, soda fountains or parts thereof, structural steel, tile, and waste.

14. Grape juice.

Schedule B

(To be printed at foot of decree)

The defendant ——— ——— (here insert defendant's name) appears generally herein and does hereby consent that the foregoing decree may be entered herein without further notice.

——— ——— (if individual, sign in person and acknowledge. If corporation, sign by duly authorized officer and acknowledge. Attach corporate seal and resolution of directors authorizing execution.)

The Attorney General explained his views concerning the said memorandum to the said Senate committee, in substance as follows:

The paper signed by the representatives of the packers contains the entire plan of adjustment. I am in harmony with that plan, and I propose to put it through. As to whether I think the plan will be entirely satisfactory to the other side, the packers, "satisfactory" is not the word. But they have agreed to go along, and they have attested that agreement by their representatives signing this very document which I have in my hand, which is the original paper. (At this point Senator France asked the Attorney General whether the agreement "is to put an end to a long-continuous violation of the law, or was there any violation of the laws? That is the question in my mind.") I will briefly state how this position, which is now taken by the Department of Justice, as wise and proper under all the circumstances, developed. When I entered the office of Attorney General, in March last (1919), I found that portions of the report of the Federal Trade Commission, which had been for a couple of years investigating the great packers, had been published and turned over to the Department of Justice for such action as the department saw fit to take. I learned also that the Bureau of Investigation of the Department of Justice had made a comprehensive examination of the operations of these corporations and their subsidiaries. I also found that committees of the Congress, both in the Senate and House, had held extensive hearings, with the idea, undoubtedly, of appropriate legislation, which hearings had developed many facts in relation to the method and conduct of the business of these packers. Amongst the first things that I did was to make inquiry about the state of this examination, and I found that the report of the Federal Trade Commission was not yet complete. I asked the Trade Commission to send me everything they had as promptly as possible, and then I selected three lawyers, two of whom had had connection with the

packers' case in its earlier days, and had participated in an earlier criminal case. The third was a New York lawyer, who I was confident, because of his ability, could examine the record, analyze it, and make a report as to what sort of case that record had presented. That lawyer had been for many years
167 assistant to the district attorney. He had done work of that sort for me while I was Alien Property Custodian, and I knew that it would be thoroughly done. I then dumped into the lap of this committee of lawyers all of the evidence which had been accumulated from the Federal Trade Commission, our bureau of investigation, and the hearings before the committees of Congress. After several months, a comprehensive report was made to me in writing, which I carefully studied—I did not have time to study the evidence—and from which I concluded that the Department of Justice would be justified in bringing action against the packers. These lawyers agreed on the report. As to what I mean by "action," I had the feeling that in view of the long-time investigation of the packers, the way in which that question had been mauled and hauled around in the country, they were entitled either to a vindication, or the Government was entitled to a judgment—that the time had approached for a show-down in the courts. I was, of course, immediately faced with the question whether the proceedings should be in the criminal courts or on the civil side. The Sherman antitrust law is both a criminal and a civil statute. It provides a penalty and provides a civil remedy. I have felt that the Attorney General was the counsel for the Government and through it the people for whom the Government is built to serve. I believed it was his duty to do with respect to those clients as he would in private life, that is, decide which courts, if more than one were open, would be in the public interest and would bring justice to all parties. Without having definitely decided whether we would proceed in the criminal courts, or in the civil courts, I instructed my assistants to develop some further facts in relation to the case before a grand jury. They went to Chicago, and called some witnesses, "not with any definite idea of getting an indictment, but with the purpose of getting out some further evidence that we needed." Of course, it had not been an easy matter to decide in a case of this kind whether the civil or the criminal processes should be invoked. The Sherman antitrust law has been upon the statute books thirty years without any Attorney General having succeeded in putting anybody in jail under it, "and the prospect of the criminal prosecution was not bright." While the case was pending before the grand jury in Chicago, and about the time that I had issued orders to have a grand jury investigation in the city of New York, to develop some further evidence that we felt we needed, I received intimations that these packers desired to see me with respect to this case, that they desired to present their side of it to the Department of Justice, that they felt they had never been accorded a proper hearing before the Federal Trade Commis-

sion, and that, before I acted, they would like an opportunity to present their side. I replied to that message that if the five great packers desired to see me with the idea of dissuading me from taking any action against them, if they desired to see me for the purpose of arguing with me "as to the merits of the controversy, I did not care to meet them." I stated, however, that if they desired to come to me with the idea that they would surrender to the Govern-
168 ment, or desired to see how far they could go in complying with such requirements as the Government's law officers should lay down, I should be perfectly willing to see them. I told them that if they desired to come, they should come through their principals, in order that we might discuss the matter as a business proposition, and not as a lawyer's proposition. I thought that would be the end, but I was advised they would like to send a representative, competent, who would speak for all of them, and who would discuss the matter with me from the point of view of my reply, and that point of view only, "without argument as to the merits of the case," without any attempt to persuade me to stop any contemplated action, but only with the thought that they would put themselves in the position of law-abiding citizens, "and do what the Government required them to do," if they could. With that understanding, negotiations, if you may call them negotiations, began. A representative of the company came to me, and I discussed it with him. The first man to come to me was the vice president of Armour & Company, who came to me with satisfactory credentials to show that he was in effect speaking for all of them. After that, for a matter of a couple of months, we discussed what I thought the packers ought to do, and they answered as to what they felt they could do and what they could or would not do. And this discussion proceeded for a considerable time, "until finally I prepared a draft of a plan which I was willing to put into effect, and after a very great deal of hesitancy and strong objections, they finally assented to it." The suit had not yet been commenced. Pending these discussions, I withheld a further proceeding before the grand jury in New York, without any agreement so to do. I hoped that possibly we would come to a point where I could call it a finished piece of business, without a grand jury investigation. I started in Chicago, but I moved to New York. An indictment, even if followed by a conviction, and even if that were followed by putting somebody in jail, would not of itself have brought any relief directly to the situation. "A bill in equity, under the Sherman antitrust law, bitterly contested, might not have achieved some of the things that I felt, and thought everybody else who had given this question any study felt, ought to be accomplished, if we were going to have any real results from some disintegration of this business." It seemed to me that it was perfectly proper, if I could, to require, in the circumstances, "that certain things be done, which, under other circumstances, we might not be able to accomplish, and if I were able to get that much, I would do more for my client, the Gov-

ernment of the United States and the people, than if I blazed away in an adverse proceeding, either in criminal or civil court." I wanted to accomplish five things, namely, first, take these packers, their subsidiaries and their principal stockholders, out of the stockyard business and keep them out, take them out of the terminal railroads which entered the stockyards and keep them out, and take them out of the livestock or market publications and keep them out. Under this decree, all of these packers, and all of their subsidiary companies, and all of their large individual stockholders, are
169 put out and keep out forever from the stockyard business, the terminal railroad business, and the livestock or market publications, and their interests in those concerns are to be disposed of under such a plan as the courts may determine. The plan is worked out so that the defendants themselves may present a plan to dispose of their interests, and if that plan is not approved by the court, then a method is made by which the court may fix the plan. "That is designed for the purpose of permitting the producers themselves, if they desire, to be substituted in the ownership of the stockyards and terminal railroads for the packers." The second thing was to take them out and keep them out forever from the public storage warehouse business, and that is done in this decree. "The third thing I desired particularly to do was to take them out, and particularly to keep them out, in order to answer the menace which we felt in the country was really competitive business, of the retail business and every line and of every kind. That is done by this decree." And the next thing I desired to do "was to take them out and keep them our of all of the unrelated lines of business." This agreement speaks very plainly for itself in regard to how that is done. All those things I have mentioned, I insisted upon, and would not under any circumstances recede from. And this last is accomplished, so that the defendants, being the companies, their subsidiary companies and most of the individual stockholders, are restrained from ow ng any controlling interest in any business of a kind which deals in the goods which are scheduled in this decree, and those goods cover the entire range of commodities in which the packers and their subsidiary companies have heretofore dealt, outside of meat and its by-products, and outside of butter, milk, eggs, cheese, and poultry. The treatment of these accepted particular lines is a separate treatment. (At this point, the Attorney General read an excerpt from the aforesaid memorandum.) Another clause in this decree will perpetually restrain and enjoin these defendants, their successors and assigns, "from using or permitting to be used their distributing system in any way, shape or manner for the purpose of dealing in any of this business in the unrelated lines." I have understood it that the vice of their engaging in the business of unrelated lines lay in the fact that "they were able to destroy effective competition by reason of the advantage which they had with their distributing system and their branch houses. They could go into the wholesale grocery business

without additional fixed charges by way of overhead expense, and thus destroy the wholesale grocery or other dealer in the community who was dealing in the same kind of article." Under this decree, neither these companies, nor anybody else who acquires any right, title, or interest in them in any way, shape, or manner, can ever use by purchase, by lease, or any other kind of an arrangement, "this distributing system for that purpose," nor can they resort to any other device or arrangement which has the purpose and effect of giving that kind of an advantage to them. They are clever, and able, and ingenious in business, and I insisted upon the clause that they "should not be permitted to devise anything which would
170 give them the chance to do with the wholesale grocery business what their distributing system has permitted them to do." Under this decree, only the individual stockholders can own interests in these various corporations, the corporation defendants can not. They must sell out, the subsidiary corporation defendants must sell out, but the individuals who are named as defendants and who are stockholders in these companies may own less than a control of concerns which deal in this business. Under this decree, Mr. Armour or Mr. Swift could own an interest, providing it was not a controlling interest, but they could not, each one being a minority stockholder, have together their interest, constituting a majority. Of course, there we are met by a matter of the individual right of an individual to invest his money as he might see fit. Mr. Armour's contention was that if he sold out these millions of dollars in businesses which he had to sell out, he would have money to invest, and while he did not expect to go into the grocery business in any way, shape, or form, he assumed he would have to take stock in some of the companies that would buy this business, to some little extent, until he finally should get out; and I did not see any direct way of requiring the individuals themselves never to invest in any of this kind of property. Under the decree, they are prohibited singly and collectively from owning a majority of the stock. I have not had the bill filed, but we are going to file shortly. I have an agreement for the decree, although the bill is not filed. No action has actually been commenced. This was finally concluded just before the Christmas holidays. I will not call this an agreement. These gentlemen have agreed to my plan, if that be called an agreement. I did not sign this as agreeing to it on the part of the Government. I announced what I would do, and they said they would go along, and it provides that suit in equity will be brought against the following corporations and individuals, naming nearly 200 corporations and individuals, "and then provides what shall be the result of that suit. The defendants, without admitting guilt, are agreeable to a decree being presented by the Government and signed by the court which shall contain these provisions." I at first very strongly insisted that butter, eggs, cheese and poultry should be included amongst the businesses which these defendants, both individually and as corporations, would go out of. But the more I studied that question the

more doubtful I became of whether justice would be done to the people as well as to the packers if I insisted upon it. They are refrigerated products, "which the distribution system of the packers makes possible to collect and sell, and keep and sell in a way that has an economical value." I do not care to argue that proposition, but I think it is at least involved in doubt. And what I finally did with that was to enter a stipulation in the decree that this case should be opened for the purpose of permitting the Government, at any time it might see fit, in this very case to produce evidence designed to show that the control or interests of the packers in those businesses was unlawful or inimical to the public interest, so that further adjudication might be granted by the court in the case. In other words, "I left the door open for such future action as the conditions might seem to
171 warrant," so that in case the butter people should ask for the same relief that the wholesale grocers have asked for, it still would be possible for them to get it, if the court agreed with them. There would be a fight on that, I suppose. (At this point, the chairman of the committee stated as follows: "The main fight, of course, that has been carried on before this committee—at least during our hearings this session—has been by the wholesale grocers, claiming that it was impossible for the wholesale grocers to compete, because, you stated a moment ago, the overhead expense would be the same for the packers, whether they carried on this grocery business or not, and that they were also favored with respect to refrigerator cars, that they owned their own cars." The Attorney General: "I should think likely that you would have fewer visitors of that kind after this goes into effect than you have had in the past." The chairman: "Yes. But, of course, there is still a very important question to be decided, unless the matter of butter, eggs, and poultry is taken care of, because while those industries are owned by smaller people—the majority of them—owned by little grocers throughout the country, and they have not been heard, so far as I know; so far as I know they have not been here, although the grocers have been here." The Attorney General: "I think there is a very wide difference of opinion amongst men, outsiders, who deal in butter, eggs, poultry, and cheese, as to whether it is a wise thing to take that business away from the packers or not." The chairman: "It was not my intention to say that it could be taken away; I do not know.") The Attorney General then proceeded in substance as follows: Under this decree, the packers may be engaged in the butter and cheese business. I suppose that means owning creameries. They can not handle fresh milk at all, they can not sell fresh milk. They can buy milk for the purpose of making cheese, "but we take them out of the sale and distribution of milk." I think they could still retain creameries. At this point, the Attorney General read another excerpt from the aforesaid memorandum.) The Government is not prohibited from commencing an action, either civil or criminal, in the cheese, poultry, and egg business, and is not prohibited from bringing a civil or criminal action in any other way. There is nothing in this decree, either directly or indirectly, that would

prohibit the Government from proceeding against the packers or any of them in regard to any illegal action in the past about meats, for instance, but on the contrary there is specifically permitted the Government may do so, and that is the very clause which I read. That does not apply only to butter, eggs, and poultry, but it is "or any other business or activity." We do not restrain the manufacture of butter and cheese by these defendants, but we simply leave the door open for the purpose of making such further showing as the Government might desire to make in the future to ask for further relief in reference to those things. So far as this suit is concerned, practically it has nothing to do with the manufacture of butter and cheese, except that, as I say, we leave the door open. We have taken these defendants out of every business except that which is usually the business of the butcher, the meat business, and these products
172 which are generally handled by butchers—butter, cheese, and poultry. I do not mean to be as brutal as it sounds, but we have made "butchers" of them. We have gotten them back, it seems to me, to the business which they originally went into, and, as to that business, we have bound them by perpetual injunction, restraining them and all these defendants from amongst themselves or with anybody else agreeing or combining or arranging to do anything which is an attempt to "monopolize that business, or in restraint of trade in that business." As to the meat business, we have an injunction of exactly the kind that the Sherman antitrust law contemplates for the Government to get against any men "charged" with a conspiracy in restraint of trade. The effect of that is that as to the meat business and its by-products and these things which they are permitted to continue in, the Government, in the future, if there be evidence of monopoly or restraint of trade, will be able to go into court in this *cary* case, "and present the facts to a judge," and holds these defendants guilty for contempt of court, if there be a violation, so that we shall not have to proceed through all of the processes of either the criminal or the civil courts in respect to that. The second thing we have done is to restrain and enjoin them forever, collectively and individually and in every other fashion, "from engaging in any unlawful trade practices." The result of that would be that any person or any concern, the Government, or any individual who was able to show an unlawful practice by these defendants, or any of them, will be permitted to come into court in this very case, and present a showing which would entitle them to adjudication against the defendant for contempt. "Those are all the things that we could possibly accomplish by a bill and an adverse decree." Anybody establishing unfair practice can go into this court and get his remedy instanter. I do not know whether these defendants will obey the injunction or not, but if there is any power left in the courts of the United States, the Government can compel them to obey this injunction; if they do not, upon a showing made in this case before a judge of the United States court that the injunction, "which is general in terms," has

been violated in any "specific particular." I got a decree for all that I saw any prospect of getting, and with that decree, "any party at interest can come in and protect its rights by the rule for contempt." I won the lawsuit, and I got a decree which "I would not have seen much prospect of getting if I had gone into court." I have said that we have "a general injunction" which makes it possible for the Government or any aggrieved party to proceed under this decree by contempt proceedings, if he pleases; that the Sherman antitrust law, with respect to the meat business, is particularly obeyed by these defendants and all the subsidiaries and principal stockholders. We have "the same kind of an injunction" which permits of the same kind of relief with reference to the "unlawful practices that they may engage in." We take them out and keep them out forever, directly and indirectly, from the control of the stockyards, "and make it possible for the producers themselves to be substituted for them in that control." We take them out and keep them out forever, directly and indirectly, from the ter-
173 minal railroads which own the stockyards, and from the live-stock market publications. "We make it impossible for them ever to engage in the retail business in any line whatever—these defendants, their successors and assigns, and all that." They have been accused of engaging in the retail business, and they have been "accused of having designs upon it." There is a great deal of evidence of the unfair manner in which they have used that competition, "and the tendency to destroy competition as a result of it." They cannot rent space in their refrigerator cars to wholesale merchants for distribution. "They cannot use their distributing system or permit anybody else to use it in any form whatever for the purpose of distributing any of these side lines." And neither can they devise any other scheme or arrangement which has the same purpose or effect. "Senator Smith, of Georgia: You have gotten a decree for what the present law authorizes the Government to obtain in protection of public rights? The Attorney General: That is right, Senator. Senator Smith, of Georgia: And you have gained your lawsuit for everything that the Sherman antitrust law authorized you to gain?" The Attorney General: I was tending strictly to my own business. I think you have stated it correctly when you say I have "won this case." I have gotten a judgment which, to my mind, is all that the Government can hope to get, and I have left the case in such shape that if anything has been overlooked we have got a splendid remedy in this particular court. I have made no agreement or arrangement or suggestion with anybody as to what the future course of the Government is going to be with respect to litigation. I could go into court tomorrow against these people if I desired to do so. I would like to see this thing tried out. I believe this is a great, long step forward. I believe we have gotten things that we have been fighting for for years, apparently without hope of getting. I do not promise it is going to mean immediate lowering of prices.

"There is great strength in the argument of an efficient, big concern, resulting in lower prices to the consumer, but it is the argument of the efficiency of autocracy." At any rate, what we have done, "if we have destroyed that efficiency, which might result in lower prices," we have destroyed autocracy and returned to the form of our democratic kind of government for business. We have made it possible for men of all kinds, in all classes, to get into these businesses, and if that does not result in benefit to the American people, then our whole theory of competition is wrong. This is the first time I have ever announced it, but I do not expect to proceed against the defendants criminally for violation of the Sherman antitrust law. By this decree we do not forgive any criminal offense they may have committed; we forgive nothing in the Department of Justice. "I have never said a word about criminal prosecutions, but having forced them into the position where they have agreed to go as far as that in meeting the Government's position," I would think I would be doing a very improper thing to attempt to convict the individuals in a criminal court, and I would be moved to that consideration a good deal by "the practical difficulties in the way of getting convictions." Senator France: Was the department satisfied beyond any reasonable
174 doubt that these gentlemen had committeed a criminal act, or any of them? The Attorney General: I was not sitting in the jury box, and the rule of reasonable doubt does not govern the Attorney General of the United States. I was convinced that the time had come for the Government to take action, and the responsibility was upon the Attorney General of the United States to decide whether to bring the action in the criminal or the civil courts, and the Attorney General decided to bring the action in the civil courts, "when he found he could get this kind of a decree." This is not an agreement; they signed their names to it as agreeing; but that was my proposition, which they came to. In the case of the miners, when we got to the very point of contempt proceedings, we made no agreement with them. The Government of the United States makes no contract with defendants, but we told them what the law was, what the Government's position was, and that they could take it or leave it, and the miners surrendered to the Government, "just as the packers have surrendered to the Government." There was no agreement in either case. Senator Norris: It looks to me like an agreement; maybe it is not. Senator France: You talked it over before the suit? The Attorney General: Talked it over with the Government. You may call it an agreement if you like. You may call it an agreement, but I do not call it an agreement when the law officer of the Government sits down before a defendant and says, "This is the law. This is what the Government demands, and we ask you to come to it." If they come to it and put their name to a paper showing they will go along, that is not agreeing with a law violator. Setting up an agency that gave its particular attention to the stockyards and market situation, and brought to it all necessary publicity, certainly would not hurt my decree. I would not have the slightest

objection to it. My only thought is that "such an agency would be duplicating the work of the United States court, which has really now supervision of all this business under this decree. But I see no objection to it." [The packers and stockyards act was passed August 15, 1921, 42 St. L. 159, 163.] Senator Kendrick: Would not this be true, that the courts had so much of other things to engross their attention that it would better be lodged in some agency? That is the reason that within the past day or two we have suggested a plan by a proposed draft of the bill by which we would have a commission look primarily after those great markets and investigate them, and study where it was necessary, and to supervise the operations of those markets. The Attorney General: That is, stockyard markets? Senator Kendrick: Stockyards. I ask of you if such a commission would not have the effect of tremendously strengthening the force and effect of this decree? The Attorney General: I should think it might. It might be in a position to advise the court. I do not mean to be advocating that kind of legislation, because any opinion is that we might try the thing as we have if for awhile. But I cannot see any harm in it. It might result in good.

The foregoing testimony was given and published in the
175 reports of the Senate committee and on January 17, 1920, prior to the entry of the decree in this suit, the testimony was copied and sent to the wholesale grocers of the United States.

Paragraph IX

Your petitioner further avers that heretofore, to wit, February 27, 1920, in accordance with the aforesaid memorandum, the plaintiff United States of America filed the original bill of complaint in this cause, alleging that the defendants had entered into certain unlawful contracts and combinations to restrain trade and commerce and to prevent competition among themselves in the prices for which meat and meat products are sold, and inferentially averring that the defendants had attempted to monopolize interstate trade in fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers, but the said bill fails to expose any act or acts showing or tending to show any such contracts or combinations or monopoly. The same date, to wit, February 27, 1920, in accordance with the aforesaid memorandum, and simultaneously with the filing of the said bill, the defendants filed their respective answers, directly denying the accusations of the said bill, and expressly asserting that the defendants had not entered into any contract or combination in restraint of trade or commerce, and had not created or attempted to create any monopoly in any food commodities, and all of the allegations of the said bill necessary to empower the court to grant the plaintiff the relief prayed, or any other similar relief, were fully and explicitly denied by the said answers, and thereby an issue of fact was effected as to all of the material

allegations of the said bill. The same date, to wit, February 27, 1920, in accordance with the aforesaid memorandum, and simultaneously with the filing of the said bill and answers, a certain stipulation dated February 27, 1920, between the plaintiff and defendants was filed, in the words and figures following:

It is hereby stipulated by and between the parties hereto that the decree hereinafter contained may, upon consent of the parties and without any findings of fact, be entered in this cause.

The corporation and individual defendants, while maintaining the truth of their answers and asserting their innocence of any violation of law in fact or intent, nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, consent to the making and entry of said decree; but this stipulation shall not constitute or be considered as an admission and the rendition or entry of the decree, or the decree itself, shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States.

The decree above referred to is as follows: [Here follows the draft of the decree which was entered the same date, but is omitted to avoid unnecessary repetition.]

176 The same date, to wit, February 27, 1920, in accordance with the aforesaid memorandum and stipulation, and simultaneously with the filing of the said bill, answers, and stipulation, the injunction decree of February 27, 1920, was thereupon presented to and signed by the court, as a mere matter of form, without any hearing or consideration of the merits or the issues of fact presented by the pleadings, and regardless the legal effect of the reservations of the defendants in the aforesaid stipulation, and regardless the legal effect of the following provisions of the said decree itself:

This cause having come on to be heard on this 27th day of February, in the year 1920, and the petitioner * * * having moved the court for an injunction in accordance with the prayer of its petition; and it appearing to the court that the allegations of the petitioner state a cause of action against the defendants under the provisions of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto, and that the court has jurisdiction of the persons and the subject matter; and the several defendants have accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of

antagonism to the Government, have consented and do consent to the making an entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States.

Now, upon the petition, the answers of the defendants, and the aforementioned stipulation and consents of the parties, all on file in the office of the clerk of this court, and on motion of the petitioner, it is ordered, adjudged, and decreed as follows:

The rest of the said decree was and is in the words and figure following:

First. That the corporation defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, in any manner maintaining or entering into any contract, combination, or conspiracy with each other, or with any other person or persons, in restraint of trade or commerce among the several States, or from either directly or indirectly, by themselves or through their officers, directors, agents, or servants, either jointly or severally monopo-
177 lizing or attempting to monopolize or combining or conspiring with each other, or with any other person or persons, to monopolize any part of such trade or commerce.

Second. That the defendants and each of them be, and they are hereby, jointly and severally perpetually enjoined and restrained from owning, either directly or indirectly, individually or by themselves, or through their officers, directors, agents or servants, any capital stock or other interest whatsoever in any public stockyard market company in the United States, or in any stockyard terminal railroad in the United States, or in any stockyard market newspaper or stockyard market journal published in the United States, except in so far as the court may permit any of the individual defendants to retain any such interests upon the conditions and in such circumstances as are provided for in paragraph tenth of this decree; and said defendants and each of them are hereby further enjoined and restrained from accepting or permitting to be given, directly or indirectly, on any pretext whatever, to any of them, or to any of their officers, directors, servants, or employees, for the use and benefit of the corporation defendants or any of them, any capital stock or other interest in any public stockyard market company, stockyard terminal railroad, or stockyard market newspaper or stockyard market journal.

Third. That the corporation defendants and each of them and their successors and assigns be, and they are hereby, perpetually enjoined and restrained from, either directly or indirectly, by them-

selves or through their officers, directors, agents, or servants, through any device or arrangement whatsoever, using or permitting any other person, firm, or corporation to use their distributive system and facilities, including their branch houses, route cars, and auto trucks, or any of them, in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in any of the articles or commodities named and described in paragraph fourth of this decree, except in so far as permitted in said paragraph fourth, and except refrigerator cars when in good faith leased to common carriers, or furnished to them for their use as common carriers.

The corporation defendants or any of them may from time to time lease, sell, or otherwise dispose of any of the items of their distributive system free from any of the restrictions of this decree when they have a surplusage thereof or when such items have become obsolete or are otherwise not required for the business of the defendants or any of them. But no sale, lease, or other disposition of a substantial part of defendants' respective distributive systems or such distributive system as an entirety shall be made without submitting the same to the court for the court's investigation and determination as to whether said proposed sale, lease, or other disposition is in accordance with the spirit and purpose of this decree, and without notice of the application for such approval first given to the Attorney General. Nothing herein contained shall be construed to prohibit the defendants or any of them from mortgaging or otherwise creating liens on said distributive system or parts thereof.

178 Fourth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their officers, directors, agents, or servants, engaging in or carrying on, either by concert of action or otherwise, either for domestic trade or for export trade, the manufacturing, jobbing, selling, transporting (except as common carriers), distributing, or otherwise dealing in any of the following products or commodities, except when such products or commodities are purchased, transported, or used (1) as supplies in operating their packing houses, branch houses, or other facilities used by them, or as an incident in the processes of manufacturing soap or packing-house products; (2) in the construction and physical maintenance of their packing houses, branch houses, or other facilities used by them; (3) in the operation of their restaurants, laundries, or other conveniences, primarily for the benefit of their employees; or (4) in combination with meat, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Canned oysters.	Bulk, canned, and cured herring.	Canned sardines.
Canned mackerel.	Canned salmon.	Canned shrimp.
Bulk mackerel.		Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Corn.	Garlic.
Navy beans.	Okra.	Horse-radish.
Lima beans.	Potatoes.	Pumpkins.
Peas.	Tomatoes.	
Beets.	Celery.	

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mincemeat, to wit:

Ginger.	Pineapple.	Strawberries.
Cherries.	Raspberries.	Apples.
Apple butter.	Currants.	Prunes.
Apricots.	Figs.	Raisins.
Blackberries.	Gooseberries.	Dates.
Peaches.	Oranges.	

4. Confectionery, sirups, soda-fountain supplies and sirups and soft drinks (grape juice is not included in this paragraph 4; see paragraph 14), including therein, but in nowise limiting the foregoing general description, the following, to wit:

179	Apple cider.	Green pineapple sirup.	Root beer.
	Cherry juice.	Lemon extract.	Vanilla extract.
Coca Cola.		Marshmallow topping.	Vin fiz.
Cremé dementhe.		Orange extract.	
Crushed nut frappe.			
Ginger ale.			

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.	Mustard seed.	Pickles.
Chili sauce.	Olives.	Spinace chili.
Cinnamon.	Oyster cocktail sauce.	Tomato catsup.
Cloves.		
Mustard.	Pepper.	

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit:

Almonds.	Pecans.	Walnuts.

But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

11. Cereals, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Grits.	Clipped Oats.	Rolled oats.
Oats.	Corn grits.	Standard middlings.
Hominy.	Ground meal.	Standard spring brand.
Hominy feed.	Ground oats.	Spaghetti.
Horse feed.	Ground corn.	Vermicelli.
Brewers' flakes.	Cracked corn.	Macaroni.
Brewers' grit.	Crushed white oats.	Corn flakes.
Brewers' meal.	Feed barley.	Wheat foods.
Buckwheat.	Feed meal.	
Canned hominy.	Feed wheat.	

12. Grain.

13. Miscellaneous articles, to wit:

Cigars.	Brass castings for heavy ordnance.	Lath.
China.	Brick.	Pitting and fruit-handling machinery.
Furniture.	Builders' hardware.	Roofing.
Bluing, starch.	Bumping posts for railroads.	Sand and gravel.
Fence posts and wire fences.	Cement, lime, plaster.	Shingles.
Alfalfa meal.	Doors and windows.	Soda fountains or parts thereof.
Babbitt.	Dried brewers' grains.	Structural steel.
Bar iron.		Tile.
Binding and twine.		Waste.

180 14. Grape juice.

And the corporation defendants and each of them be, and they are hereby, further perpetually enjoined and restrained from owning, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in any corporation, firm, or association except common carriers, which is in the business, in the United States, of manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the above-described products or commodities.

Fifth. That the individual defendants, and each of them, be, and they are hereby, perpetually enjoined and restrained from, in the United States, either directly or indirectly, by themselves or through their agents, servants, or employees, owning voting stock which in the aggregate amounts to 50 per cent or more of the voting stock of any corporation, except common carriers, or any interest in such corporation resulting in a voting power amounting to 50 per cent or more of the total voting power of such corporation, or which interest by any device gives to any such defendant or defendants a voting power of 50 per cent or more in any such corporation, or a half interest or more in any firm or association which corporation, firm, or association may be, in the United States, in the business

of manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in any of the following products or commodities, to wit:

1. Fresh, canned, dried, or salted fish, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Canned oysters.	Bulk, canned, and cured herring.	Canned sardines.
Canned mackerel.		Canned shrimp.
Bulk mackerel.	Canned salmon.	Canned tuna fish.

2. Fresh, dried, or canned vegetables, except in combination with meats, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Asparagus.	Corn.	Celery.
Navy beans.	Okra.	Carlic.
Lima beans.	Potatoes.	Horse radish.
Peas.	Tomatoes.	Pumpkins.
Beets.		

3. Fresh, crushed, dried, evaporated, or canned fruits, including therein, but in nowise limiting the foregoing general description, the following, but not including the same when used as an ingredient of mince meat, to wit:

181	Ginger.	Pineapples.	Strawberries.
	Cherries.	Raspberries.	Apples.
Apple butter.		Currants.	Prunes.
Apricots.		Figs.	Raisins.
Blackberries.		Gooseberries.	Dates.
Peaches.		Oranges.	

4. Confectionery, sirups, soda-fountain supplies, and sirups and soft drinks, not including grape juice, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Apple cider.	Ginger ale.	Orange extract.
Cherry juice.	Green pineapple sirup.	Root beer.
Cocoa Cola.	Lemon extract.	Vanila extract.
Creme de menthe.	Marshmallow topping.	Vin fiz.
Crushed nut frappe.		

5. Molasses, honey, jams, jellies, and preserves of all kinds.

6. Spices, sauces, condiments, relishes, and sauerkraut, including therein, but in nowise limiting the foregoing general description, the following, to wit:

Catsup.	Mustard.	Pepper.
Chili sauce.	Mustard seed.	Pickles.
Cinnamon.	Olives.	Spinace chili.
Cloves.	Oyster cocktail sauce.	Tomato catsup.

7. Coffee, tea, chocolate, and cocoa.

8. Nuts, including therein the following, to wit:

Almonds. Pecans. Walnuts.

But not including peanuts.

9. Flour, sugar, and rice.

10. Bread, wafers, crackers, biscuits.

And further perpetually enjoining and restraining said individual defendants and each of them from individually or jointly, either directly or indirectly, by themselves or through their agents, servants, or employees, adopting any device or arrangement which, by reason of the relation of said individual defendants or any of them to the corporation defendants or any of them, would have the purpose or effect of giving to such business of dealing in the articles hereinabove in this paragraph mentioned and described, in which business such individuals or any of them may be substantially interested, an advantage over their competitors similar in purpose or effect to any advantage now enjoyed by any of the corporation defendants through their distributing system.

Sixth. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, in the
182 United States, owning and operating or conducting, either directly or indirectly, severally or jointly, by themselves or through their officers, directors, agents, or servants, any retail meat markets in the United States: Provided, however, That nothing contained in this decree shall prohibit said defendants or any of them from continuing to conduct the retail meat markets located at their several plants and maintained by said defendants primarily for the accommodation of their own employees as long as said retail meat market shall be continued to be operated for that purpose.

Seventh. That the defendants and each of them be, and they are hereby, perpetually enjoined and restrained from owning, directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, any capital stock or other interest whatsoever in public cold-storage warehouses in the United States; provided, however, that nothing herein contained shall be construed to prevent the defendants or any of them from owning capital stock or other interests in any corporation, firm, or association owning or operating, or from themselves owning or operating, the public cold-storage warehouses now maintained by the defendants or any of them at stockyards where said defendants or any of them now maintain packing plants, nor to prevent any of said defendants, directly or indirectly, from establishing, owning, maintaining, or leasing necessary cold-storage facilities or space required in good faith for the storage of commodities in which they or any of them may be interested, nor from renting space in any cold-storage warehouse directly or indirectly owned or leased by any of them to the public whenever such space is not in good faith required or needed by the defendants for their own use, nor from storing products for

the public whenever the space used for that purpose is not in good faith required by the defendants for their own use.

Eighth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from engaging in the United States, either directly or indirectly, jointly or severally, by themselves or through their officers, directors, agents, or servants, in the business of buying, collecting, selling, transporting, except as common carriers, distributing or otherwise dealing in fresh milk and cream, and further perpetually enjoining and restraining said defendants and each of them by themselves or through their directors, officers, agents, and servants, from either directly or indirectly owning any capital stock or other interest in any corporation, firm, or association engaged in the business of buying, collecting, selling, transporting (except as common carriers), distributing, or otherwise dealing in fresh milk or cream; provided, however, that nothing herein contained shall be construed as preventing the corporation defendants or their subsidiaries from buying, collecting, and transporting fresh milk and cream to be used by them or any of them in manufacturing condensed or evaporated or powdered milk or oleomargarine or other butter substitutes, or butter, ice cream,
cheese, or buttermilk, or to be used as feed or in combination
183 with any commodity not specifically mentioned and described in paragraph fourth hereof; and further provided, that nothing herein contained shall be construed as preventing said defendants from selling or otherwise disposing of milk and cream bought or collected for manufacture, when such sale or disposition is necessary to avoid waste.

Ninth. That the corporation defendants and each of them be, and they are hereby, perpetually enjoined and restrained from, jointly or severally, by themselves or through their officers, directors, agents, or servants, engaging in, carrying on, or using any illegal trade practices of any nature whatsoever in relation to the conduct of any business in which they or any of them may be engaged.

Tenth. That within 90 days after the entry of this decree such of the defendants as have interests in public stockyard market companies, stockyard terminal railroads, or market newspapers, shall file in this court, for the court's approval, a plan or plans for divesting themselves of all ownership or interest in: (1) Public stockyard market companies; (2) stockyard terminal railroads; (3) market newspapers; provided, however, that the court may, in the event that it deems such provision necessary in order to enable the defendants to divest themselves of their interests in public stockyard market companies and stockyard terminal railroads, upon reasonable terms, permit the individual defendants, or some of them, to retain an interest by way of stock ownership, or otherwise, in any public stockyard market company or stockyard terminal railroad, or in any corporation organized to take over such public stockyard market companies or stockyard terminal railroads or the stock thereof; but no de-

fendant or defendants shall at any time, either individually or jointly, own a controlling interest in any such stockyards or stockyard terminal railroads. Within such period of time after the entry of this decree and the approval of said plan or plans as the court may determine, the defendants shall, in good faith, completely divest themselves of all such ownership or interests in public stockyard market companies, stockyard terminal railroads and market newspapers. If, within the time so fixed, the defendants shall not have disposed of said interests ordered by the court to be disposed of, and the court upon application shall determine that the defendants have been unable, despite due diligence to dispose of the same upon reasonable terms, the court may extend the time during which such ownership, control, or interest may continue until the same can be disposed of.

Eleventh. That immediately upon the entry of this decree the defendants shall in good faith and with due diligence proceed to dispose of their interests in, and shall completely divest themselves (to the extent required by this decree) of all ownership of or interest in all public cold-storage warehouses and retail meat markets; but in no event shall the defendants, or any of them, make final disposition of any of their interests in such public cold-storage warehouses and retail meat markets without first obtaining the court's approval to such final disposition. If, within nine months after the entry of this decree, the defendants shall not have finally disposed of their interests in public cold-storage warehouses
184 and retail meat markets, the Attorney General may apply to the court for an order specifying the time within which the defendants shall finally dispose of all said interests.

Twelfth. That immediately upon the entry of this decree the defendants and each of them shall commence to dispose of such commodities owned or handled by them as are described in paragraphs fourth and fifth of this decree and which are to be disposed of by them under this decree, and shall likewise immediately upon the entry of this decree commence to divest themselves of all interest which are to be disposed of by them as and to the extent required by this decree in firms, corporations, and associations, including departments of the business of any of the corporation defendants when any of such departments is sold as a going concern, manufacturing, selling, or otherwise dealing in any of the commodities so mentioned and described in paragraphs fourth and fifth of this decree, and shall continue in good faith to dispose of said commodities required to be disposed of hereunder, and to divest themselves of such interests required to be disposed of hereunder as rapidly as may be consistent with the nature of the business and the seasonal nature of the merchandise involved, and that in any event the defendants and each of them shall completely dispose of said commodities and shall cease to manufacture, job, sell, transport, except as common carriers, distribute, or otherwise deal in the same, and shall completely divest themselves of said interests within two years from the date of the entry of this

decree; provided, however, to the end that the provisions of this decree may be complied with, the approval of the court shall be obtained prior to the final disposition of said interests in firms, corporations, or associations manufacturing, selling, or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree. At any time within said two years the Attorney General may apply to the court for an order or orders to compel the defendants, and each of them, to make report to the court as to the progress being made by them in disposing of said commodities and in divesting themselves of said interests.

Thirteenth. That the purchaser or purchasers of the defendants' interests in any stockyard shall, as a part of said purchase, agree with such of the defendants as now maintain packing plants in said stockyards that for a period of at least 10 years after the date when such purchase shall be consummated said purchasers, their successors or assigns, will continue to maintain and efficiently operate such stockyards and each of them, and such of said defendants as now maintain packing plants at any of said stockyards shall agree with said purchasers that during the same period of 10 years said defendants, their successors or assigns, will continue to maintain and operate said packing plants at the points where the same are now located, unless strikes, shortage of supplies, or other causes beyond the control of either the purchasers, the stockyard companies, or said defendants shall prevent the carrying out of said agreement. Performance by either party shall be a condition concurrent to performance by the other.

185 Fourteenth. That nothing in this decree contained shall be construed to prohibit anything that may be otherwise lawfully done by the defendants, or any of them, in the United States in connection with or for the purpose of export trade or foreign commerce or business of the defendants; provided, however, that nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree.

Fifteenth. That nothing contained in this decree shall be held to preclude the petitioner from proceeding against any or all of the defendants, either civilly or criminally, for any violation of any law in connection with the carrying on by them of the business of buying and selling poultry, butter, eggs, and cheese, or any other business or activity not specifically mentioned in this decree; nor shall anything contained herein prejudice the Government in any such proceeding; nor shall this decree interfere with or prejudice any legal rights, business, or activity of the defendants, or any of them, not prohibited or covered by this decree.

Sixteenth. That for the purpose of (1) enabling the petitioner to ascertain whether the defendants are in good faith carrying out the terms of this decree; and (2) for the purpose of enabling the Attorney General to determine and advise the court whether in any transaction consummated or begun at any time prior to the entry of

this decree the defendants, or any of them, have retained and now retain such an interest in or control over any public stockyard market company, stockyard terminal railroad, stockyard market newspaper, stockyard market journal, cold-storage warehouse, retail meat market, or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree, which would constitute a violation of this decree if the retention of such interest or control had been the result of a transaction consummated or begun subsequent to the date of the entry of this decree; and (3) for the further purpose of enabling the Attorney General to determine and advise the court whether any leases, contracts, or arrangements concerning their, or any of their, distributing systems made or entered into by the defendants, or any of them, prior to the entry of this decree, and in force on the day when it shall be entered, are in violation of the terms thereof, then, in the event that the Attorney General in writing notifies the defendant or defendants concerned with respect to such alleged violation, reciting in reasonably specific terms the nature thereof, the corporation defendants are hereby directed to make full and complete discovery to the petitioner with respect thereto, and the corporation defendants are further directed to submit to the Attorney General or to any Assistant Attorney General by him duly authorized all of their books, records, correspondence, or other documents in so far as the same refer to the alleged violation, and to furnish all information concerning the same.

Seventeenth. That all sales, transfers, or other disposition made by any of the defendants since the first day of October, nine-
186 teen hundred and nineteen, of any of their interests in public stockyard market companies, stockyard terminal railroads, stockyard newspapers or journals, public cold-storage warehouses and retail meat markets, or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing, or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree and all leases, contracts, or arrangements or other disposals made by any of the defendants since the first of October, nineteen hundred and nineteen, affecting their delivery systems, shall be submitted by the defendants to the court for its investigation and determination as to whether the same were made in accordance with the spirit and purpose of this decree, in the same manner and with the same force and effect as though the said sales, dispositions, leases, contracts, or arrangements had been made subsequent to the entry of this decree.

Eighteenth. That jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time

hereafter any application which the parties may make with respect to this decree.

WALTER I. McCOY,
Chief Justice.

FEBRUARY 27, 1920.

Paragraph X

Your petitioner further avers that the legal effect of the aforesaid reservations in the said stipulation and decree was to prevent this court from exercising any power or jurisdiction in the premises, and particularly to deprive this court of any power or jurisdiction to enter the said decree, or any similar decree, in this suit. Moreover, as hereinbefore set forth, the immediate and direct effect of the aforesaid decree, if it be apparently valid, was to create and continue monopoly in the so-called unrelated commodities in favor of the members of the aforesaid wholesale grocers associations, for which reason it is void. In addition, the injunction is so general in its terms that it is a nullity. Furthermore, the injunction is void because it attempts to enjoin the defendants from lawfully conducting lawful businesses, particularly in the unrelated commodities, and also attempts to prevent them from engaging in export trade which the Webb Export Combination Act of April 10, 1918, 40 St. L. 517, expressly permits them to do. Also, the said decree was and is a highly disastrous economic mistake, and was wholly unfounded in law or in fact.

Paragraph XI

Your petitioner further avers that under the aforesaid contract of May 9, 1919, between your petitioner California Cooperative Canneries and the defendant Armour & Company, the latter agreed to purchase from the former all of the California canned fruits
187 required by the said Armour & Company, in so far as your petitioner was able to furnish the desired quantity and grades, for the period of nearly ten years, and under the said contract the said Armour & Company handled about 52 per cent of your petitioner's total annual output. The said contract was of great value to your petitioner, as it gave your petitioner a ready market for the larger portion of its output and a great deal of time and money were thereby saved in sales effort and expense. The said contract was also very valuable to your petitioner in obtaining loans from banks, as they were willing to make loans to your petitioner, because they were satisfied that a considerable portion of your petitioner's pack was sold in advance to a very reliable buyer, and that your petitioner would be able to pay back to them the money which your petitioner borrowed from them to cover the expense of canning. Having such a considerable part of its pack sold for a substantial term of years, your petitioner's members, who are growers of fruits and vegetables as aforesaid, felt secure, as they knew that their products were

already marketed, and they were therefore able to plan the care of their orchards and the conduct of their business with a sense of security as to the future. The said contract also gave your petitioner an assurance of the widest distribution of its products so that your petitioner was able to operate its plants at full capacity and thus reduce the cost of operation to the minimum.

Paragraph XII

Your petitioner further avers that after the entry of the said decree of February 27, 1920, the defendant Armour & Company notified your petitioner that the said defendant was compelled to discontinue the handling of products such as your petitioner's, and that the said contract must be considered as canceled. It is impossible to determine the full extent of the damages already sustained by your petitioner from the said decree. The said decree instantly destroyed markets which had been slowly and painstakingly built up during a long period of years, and took away your petitioner's principal outlets, both foreign and domestic, for its products, and the effect of the said decree was to destroy your petitioner's said contract, and to take its property without compensation or due process of law. The actual and potential damages which your petitioner has suffered and will suffer by reason of the said decree and the indirect damage to your petitioner's grower members, in destroying their principal markets, is impossible of calculation. Destroying such channels of distribution directly and adversely affects every fruit producer in California, and in many instances elsewhere.

Many groups of producers, and a large number of canneries, have more or less depended upon your petitioner to assist them in attacking the said decree. Your petitioner, by its duly authorized representative, in May, 1920, protested to the Department of Justice against the operation of the said decree, and pointed out the great damage which it had done and would do to your petitioner's said business. Since that date, your petitioner continued to present
188 its case to the Department of Justice, and asked the said department to move the court to vacate the said decree, or at least to modify it so as to allow the packers to handle food commodities other than meat products. The Department of Justice was inclined to be fair and reasonable, and carefully listened to arguments in behalf of your petitioner and others, but before the said department reached any final conclusion in the matter, the Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association of the United States, by their attorneys, and by J. H. McLaurin, president of the Southern Wholesale Grocers' Association, appeared before the said department, and protested against any modification of the said decree. Both organizations also petitioned this court for leave to intervene herein in opposition to any modification of the said decree, particularly in the event the Department of Justice should

request such modification, and such leave to intervene was granted by this court. The said associations have great power and influence, and exercise plenary authority over their members, and seriously affect the producers' retailers, and consumers of food commodities.

The said wholesale grocers' associations, through the public press and otherwise, have attacked your petitioner and the farmers' organizations. They have issued many letters and bulletins, and sent them broadcast throughout the country, to canneries, brokers, wholesale and retail grocers, and others. Some years ago, one of the enemies of your petitioner's organization even went so far as to file a complaint with the Federal Trade Commission charging that your petitioner was affiliated with the said Armour & Company, but after a thorough and complete investigation of such charge by the said commission, your petitioner was advised by the said commission that there was absolutely no truth in the said complaint.

The said Southern and National Wholesale Grocers' Associations are the concerns most actively opposed to the vacation or modification of the said decree, particularly for the reason, as hereinbefore alleged, that the direct and immediate effect of the said decree was to create and continue an absolute monopoly in the unrelated commodities in their members' favor. The said two associations are powerful trade organizations, whose members, as buyers of canned fruits and vegetables, have, by various methods, brought about the passive, and in some instances the active, opposition of certain groups of canneries and brokers. The said associations do not represent the public interest, but their object is to prevent competition against their members, and to preserve and expand the said monopoly which the said decree created for them. September 22, 1920, the said Southern holesale Grocers' Association issued a certain bulletin containing the following language:

"The meat packers of the country are, of course, fine actors, but this is one time in their history when they are going to have an opportunity, even against their will, to deal with the wholesale grocers of the country in the settling of an important issue."

The wholesale grocers have fought ruthlessly against chain stores, mail-order houses, cooperative buying by retailers, and business
189 houses of sufficient size to conduct both a wholesale and a retail business, as well as against the meat packers. The underlying purpose which holds the wholesale grocers together is that of waging organized warfare against the competition of all distributing agencies other than their own. The Federal Trade Commission, in its report on canned foods, issued May 15, 1918, stated as follows (page 70):

"The wholesale grocers acknowledge that the competition which they fear most comes from the mail order houses, the chain stores, and the great meat packers, which, as distributing agencies, do not always follow what the wholesale grocers consider the regular channels of trade. The mail order houses and chain stores buy directly

from the packers and sell directly to the consumers. Armour & Company buys from the packer and sells to the retail grocer through its branch houses."

Any method of distribution which comes into the competition with the wholesale grocers is vigorously attacked by them, and in many instances such attacks have been successful. The purposes and activities of the wholesale grocers, as represented by the said associations, constitute one of the cardinal reasons for the high cost of living, in that they expand and do not contract the spread in price of the necessaries of life between the initial producer and the ultimate consumer.

In the case of United States v. Southern Wholesale Grocers' Association, et al., 207 Fed. Rep. 434, decided August 4, 1913, by the District Court of the United States for the Northern District of Alabama, the said Southern Grocers' Association and its President J. H. McLaurin, together with two other individuals, were adjudged guilty of contempt, and fined, for violating a prior decree of the Circuit Court of the United States for the Northern District of Alabama, entered October 17, 1911, by Circuit Judges Pardee and Shelby, and District Judge Jones, whereby the said Southern Wholesale Grocers' Association and others were enjoined from committing certain acts in violation of the Sherman Antitrust Act. The decision of the court, as reported, exposes the pernicious purposes and activities of said association and will shed light upon its real purpose in opposing the vacation or modification of the said decree of February 27, 1920.

In Western Sugar Refinery Company v. Federal Trade Commission, 275 Fed. Rep. 725, decided October 10, 1921, the United States Circuit Court of Appeals for the Ninth Circuit upheld certain orders of the Federal Trade Commission against certain wholesale grocers, which orders required such wholesale grocers to cease and desist from certain unfair methods of competition in interstate commerce, in dealings with certain other concerns. The court upheld an order of the commission against the conspiracy of wholesale grocers to coerce a certain grocer conducting both the wholesale and retail grocery business in Los Angeles, California, and elsewhere.

Cases of a similar nature are pending before the Federal Trade Commission, wherein certain wholesale grocers' associations, or their individual members, have adopted various methods to prevent
190 the distribution of food products through channels other than those of the wholesale grocers. Their opposition to the vacation or modification of the said decree in this suit is simply a continuation of their fight against competition and is based wholly upon their desire to secure an advantage in what should be an open field for competition, and particularly their desire to retain and enlarge the monopoly which the said decree created in their favor.

Paragraph XIII

The wholesale grocers, through their State and national affiliations and members, have conducted and are continuing a campaign of coercion and intimidation, in order to suppress or misrepresent the real views of canners and others on the matters involved in the said decree. They have written and forwarded coercive and threatening letters to canners and others throughout the country. Through fear of boycott, and other measures of reprisal, many persons and concerns have been frightened into silence, and in some instances have been compelled to go on record against any modification of the said decree, contrary to their true views concerning it. The Prune and Apricot Growers' Association, through its manager, had gone on record as favoring a modification of the said decree, and subsequently a committee, representing the wholesale grocers, called on the directors of the said association and insisted that they go on record against any modification of the said decree. October 3, 1920, the Western Canners' Association held a meeting of its executive committee in Chicago, Illinois, and passed a resolution strongly favoring the modification of the said decree. The annual meeting of the said association was held November 11 and 12, 1920, in Chicago. At that meeting the wholesale grocers appeared in force and attended the sessions. They had quarters adjoining the Canners' Convention Hall. The whole grocers had prepared a 100 per cent delivery contract, and said that the canners would be forced to sign it in selling their pack the next season. The wholesale grocers declared that they would not withdraw the proposed contract unless the Western Canners' Association would withdraw its resolution favoring the modification of the said decree, and adopt and forward to the Attorney General of the United States a resolution against any modification thereof. As a consideration for such resolution against modification, the wholesale grocers offered to modify their joint policy of not buying futures, and promised to buy futures the next spring—something which they had refused to do the last spring, and had thereby greatly embarrassed the canners in their financing, and had consequently reduced their output. The president of the National Wholesale Grocers' Association delivered an address at the said meeting, which was chiefly an argument against any modification of the said decree, and no one was allowed to make any reply to such argument. No additional facts were brought out at the said meeting to cause a reversal of the former resolution favoring modification of the
191 said decree. At the last minute a resolution against modification was adopted, without debate. In one instance, a certain canner wrote as follows:

We are flooded with letters from jobbers requesting that we do what we can to have the decree stand as it is, but we feel that it is to our interest that the packers should be allowed again to handle can goods.

In another instance a certain dealer in the South wrote as follows:

"While we believe 100 per cent are in sympathy with your stand on setting aside the packers decree, they are adverse to taking sides in the matter. As you are aware, they are all small canners, outside of two or three, and believe they would be victims of the wholesaler's anger. Consequently they will do nothing as an association."

Some of your petitioner's brokers have had difficulties with the wholesale grocers on account of your petitioner's stand in favor of the vacation or modification of the said decree. In addition, your petitioner has received a letter from a certain wholesale grocer which conveys a thinly veiled threat to boycott your petitioner unless it reverses its position. Your petitioner refrains from giving the names and addresses of the writers of the foregoing letters for fear of subjecting them to serious business losses at the hands of the wholesale grocers. Your petitioner received a letter in circular form, dated October 22, 1920, signed by seven wholesale grocers, which letter, among other things, stated as follows:

"You will have to be on one side or the other of the fence and stay put. It is for you to choose now as to whether you are with us or against us. You can not be both. All of us make mistakes. It is our belief that you will be big enough to realize that you have made one. We await with interest—even anxiety—information as to what conclusion you have reached with regard to the subject matter of this letter."

The subject matter of the letter just quoted was modification of the said decree. In another instance a certain wholesale grocer wrote a letter to a certain canner doing business in the State of New York. The letter was in the form of a circular and was probably sent broadcast. Among other things, the said letter stated as follows:

"Therefore we believe it time for us to choose the men with whom we will have business, and it will be only common sense for us to choose the people who cooperate with us and do not cooperate by resolution or any other way with forces that are trying to create a monopoly in food."

The above-quoted letters of the wholesale grocers are threats of boycott and reprisal. With the said decree standing on the minutes of this court, the wholesale grocery organizations feel free to terrorize and coerce both those of whom they buy and those to whom they sell,
and to dictate the course of conduct of each, and to enforce the
192 same by their own methods. Those opposed to the vacation or modification of the said decree will doubtless repeat the charge that the defendant packers have attempted to monopolize, or will monopolize, the distribution of wholesale grocery items, but your petitioner avers that no evidence to support such charge has been or can be produced, and particularly that no such evidence has been produced in this cause, but, on the contrary, the plaintiff, by the provisions of the aforesaid stipulation and decree, has in effect admitted that the defendants have committed no act or acts creating or tending to create such a monopoly, or effecting or tending to effect any re-

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straint of trade or commerce, in violation of the Sherman or Clayton Acts, thus eliminating the only basis upon which the power of this court to pass the said decree could rest. Your petitioner avers that the defendants have not acted and do not act jointly in the conduct of their businesses, and their operations can not be considered as a unit, and the total of their sales can not be considered as a unit. Before the entry of the said decree the packers were in competition both among themselves and others in the purchase and distribution of wholesale grocery items, and they were severally in sharp competition with wholesale grocers. It is as misleading and incorrect to lump the sales of the five packers for the purpose of drawing therefrom the conclusion that they had created or attempted to create a monopoly in the sale and distribution of wholesale grocery items as it would be to lump the sales of the five largest wholesale grocers and conclude therefrom that they had created or attempted to create a monopoly in the sale and distribution of groceries.

The bill of complaint in this suit does not charge the defendants with creating or attempting to create any monopoly in wholesale grocery lines through any agreement, understanding, or joint action on their part, nor does the report of the Federal Trade Commission show any joint or concerted action by the packers in such lines. Mere size of business or financial strength is not evidence of restraint of trade or commerce, or of monopoly, yet the Federal Trade Commission in its report on the meat-packing industry stated that "Armour's drive into the rice market in a single year is perhaps the most striking of the potentialities in this direction." The report further states that Armour sold 16,000,000 pounds of rice in 1917, is the largest rice merchant in the world, and that the wholesale price of rice increased 65 per cent. In 1917 the total production of rice in the United States was 34,739,000 bushels, averaging 45 pounds per bushel for rough rice (the average being larger for clean rice), which equals 1,560,000,000 pounds. The rice imports of that year amounted to 266,000,000 pounds. The total of rice was therefore 1,826,000,000 pounds. Consequently the 16,000,000 pounds of rice sold by Armour in 1917 was only nine-tenths of 1 per cent of the total. The decree in this suit prohibits Armour & Company from handling any rice at all. The average farm price of rice in 1916 was 88.9 cents, and in 1917 it was 189.6 cents, or an increase of 113 per cent. The rice grower, not the rice buyer, profited by the increased price. The insinuation that Armour & Company forced up the price of rice in 1917 and thereby increased its profit is based exclu-
193 sively upon the premise that one who handles nine-tenths of 1 per cent of the total quantity of a certain commodity can and will force up its price 113 per cent in one year.

Paragraph XIV

According to the Federal Trade Commission's report, Armour & Company's sales of canned fish and vegetables and sundries, canned

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and dried fruits, fruit preserves, soda fountain supplies, and grape juice constituted 4.6% of their total sales, exclusive of their sales of dressed poultry, eggs, butter, and cheese, which items are not covered by the said decree. Wilson & Company reported to the Federal Trade Commission that its specialty, namely, the canned food, preserve, and condiment business, was less than 4% of its total business in 1918. Morris & Company, in its answer to the bill of complaint in this suit, states that "it is an admitted fact that the number of wholesale grocers and the volume of business done by them, since Morris & Company entered this field in the latter part of 1917, have increased more than 10%. This conclusively demonstrates that instead of eliminating competition, or even injuring the business, the competition of the packers has stimulated and been beneficial to the business. The entire business done by Morris & Company in the so-called unrelated lines, which consisted almost entirely of canned fruits and vegetables, amounted to less than 2% of the total annual sales of the company. The total business done by all of the packers in lines unrelated to meats amounts to less than 3% of the entire volume transacted by the wholesale grocers and packers." No figures for Cudahy & Company are available, but your petitioner avers that Cudahy & Company was never interested to any great extent in the sale of wholesale grocery lines through its own branch houses. The Federal Trade Commission's report does not give any exact figures as to the amount of Swift & Company's sales of these items, although it shows sales of canned goods by Libby. In the case of the National Wholesale Grocers' Association v. Hines, before the Interstate Commerce Commission, the testimony showed (Transcript of Testimony, p. 2967) that 80% of Libby's output was marketed through the wholesale grocers and only about 20% through the selling organization of Swift & Company. In the hearing of the case of the National Wholesale Grocers' Association and the Southern Wholesale Grocers' Association v. Walker D. Hines, a certain witness, testifying for the Southern Wholesale Grocers' Association, stated that in his opinion the total annual wholesale grocery business of the country amounted approximately to two and one-half billions of dollars, while another witness, testifying for one of the packers, estimated such annual business at two and one-half billions of dollars to three billions of dollars. Others have estimated such annual business at three and one-half billions of dollars. Accepting the lowest figures, and considering the annual business of the five great defendant packers in wholesale grocery lines, their entire grocery business did not amount to more than 4% or 5% of
194 the total wholesale grocery business of the country. As each defendant packer was in competition with the other defendant packers and all other packers, and also in competition with some 5,950 wholesale grocers of the country, no charge against the packers of creating or attempting to create a monopoly could possibly be maintained in fact. There was no real danger of the elimination

of the wholesale grocers, but as the packers did a certain amount of grocery business that the wholesale grocers might otherwise have done, they were and are of course bitterly opposed to competition with the packers, especially as the natural and lawful result of that competition, owing to the superior skill and facilities of the latter, increases the profit to the farmer and decreases the cost to the consumer. In the year 1920, according to available figures, 5,950 wholesale grocers were engaged in business in this country. That number was the result of increases in each successive prior year and has increased since 1920. The wholesale grocers are widely scattered and are found in every State and in practically every city and town of considerable size. In 1919 there were 5,304 wholesale grocers located in about 1,899 different cities and towns. About 1,322 were located in the eastern territory, about 708 in the central territory, about 1,730 in the southern territory, and about 1,544 in the western territory. Their distributing areas vary, but the average radius of distribution for the larger houses is between 100 miles and 200 miles, although some of them may considerably exceed these distances, particularly those with specialties and standard brands; but for all wholesale grocers the average radius of distribution does not exceed 100 miles.

From statements secured from 322 wholesale grocers, located in 45 States and in Canada, it appears that their aggregate sales for the year 1920 were $643,949,000. The net sales of the individual firms ranged from $176,000 to $28,400,000, and about one-half of the firms had sales between $500,000 and $1,500,000. From reports secured from 45 wholesale grocers, covering the years 1916 to 1920, inclusive, the average net sales of each firm in the group were as follows: 1916, $1,360,000; 1917, $1,690,000; 1918, $1,907,000; 1919, $2,340,000; and 1920, $2,606,000.

Your petitioner avers that the extent to which the packers entered into the wholesale grocery business did not result in driving any wholesale grocers out of business, but, on the contrary, the average net sales of all wholesale grocers from whom reports were received showed an increase of about 100% in their business. In one instance, that of the Western Grocery Company, of Iowa, capitalized at $6,000,000, and having no funded debt on January 1, 1921, its gross sales increased from $8,496,552, in the year 1914, to $26,668,215 in the year 1920, so that the volume of business of the said Western Grocery Company more than trebled in six years, and it was during those six years that the packer defendants were most actively engaged in distributing wholesale grocery items. Such an increase from approximately eight and one-half millions of dollars of gross sales in the year 1914 to more than twenty-six and one-half millions of dollars of gross sales in the year 1920 shows a solid and
195 steady growth of business, despite the fact that the said Western Grocery Company was located and carried on its business in close proximity to the principal packing house centers of

distribution. While the growth of the packers increased, yet the growth of the wholesale grocers likewise increased. The law puts no limit on the extent to which a business may grow. Mere increase in the amount or volume of the wholesale grocery business, which was handled by any or all of the defendants, was not unlawful, and did not, in any legal sense, evidence the creation of or an attempt to creat a monopoly in violation of the Sherman or Clayton Acts; that is to say, mere size is not an offense against the antitrust acts.

The wholesale grocers have also charged that the packer defendants were accorded unfair advantages over them in expedited transportation service, and in more favorable freight rates, but the Interstate Commerce Commission decided June 22, 1921, that such charge was unfounded, as will more fully appear by reference to 62 I. C. C. Decisions 375. The Interstate Commerce Commission further declared that the practice of the defendants in permitting the meat packers to load certain articles of groceries in peddler and branch-house cars was not shown to result in undue prejudice to the wholesale grocer complainants or unduly to prefer the packers, and that the various peddler-car rates and rules were not shown to be unreasonable or unduly prejudicial, with certain minor exceptions.

The wholesale grocers have made vigorous and thorough efforts to stifle or cripple competition against them and never abandoned such efforts as a result of the consent decree in this suit, or otherwise. The Interstate Commerce Commission, in its decision above-mentioned, disregarded any possible effect of the consent decree in this case, and decided that case on its merits. The chief counsel for the National Wholesale Grocers Association made a report to his client in Colorado Springs in July, 1920, and among other things stated as follows:

"The trial has been somewhat imposing in the array of parties. Twenty lawyers have actively participated. The case involved practically all the railroads, and all the packers, and all the principle wholesale grocers in the Nation. The trial was presided over by the chairman of the Interstate Commerce Commission. More than 200 exhibits and several thousand pages of testimony make up the record. The trial lasted thirty days. Hearings were conducted in Chicago, Memphis, and Washington. In the midst of the fight—at its very climax, after we had put in practically our entire case—the packers voluntarily offered to give up the handling of about one-fourth of their groceries. But we have not accepted this compromise, tendered through the good offices of the splendid, well-meaning, but ill-advised Attorney General. We want a clear-cut victory. We want equality on all our products. The fight is on. There, I have told you my story."

The National Wholesale Grocers Association strenuously denied to the Interstate Commerce Commission that the organization
196 sought at any time to have legislation enacted that would force the packers out of the business of handling certain commodities

that were handled by grocers, and in this connection counsel for the Wholesale Grocers Association stated as follows:

The Southern Wholesale Grocers Association did appear in favor of such legislation. The National Wholesale Grocers Association, the complainant in this proceeding, purposely refrained from so appearing. The executive committee of the latter organization, and also the legislative committee, considered the subject carefully and determined, definitely and unanimously, that it would not urge any such legislation. The National Wholesale Grocers Association did not favor any one of the numerous so-called packers' bills pending either in the present Congress or the previous Congress, or in any other Congress. We have the complete record and know positively that the national association has taken no such action since the date of its organization in 1906.

The only legislation the national association would have favored, as was decided by its executive committee and its legislative committee and approved by the members, would have been a bill designed merely to place the packers and the grocers on an even plane, without any special privileges for either. It was said again and again in these meetings of the association that the entire field should be free and open both for the packer and for the wholesale grocer, as well as for any other competitor or prospective competitor.

If the wholesale grocers were sincere in their aforesaid statement that "the entire field should be free and open both for the packer and for the wholesale grocer, as well as for any other competitor or prospective competitor," their strenuous opposition to any modification of the consent decree in this suit must be insincere, since the result of vacating the degree or so modifying it as to allow the packers to reengage in handling the unrelated commodities will accomplish the very result which they declared again and again that they favored, namely, that "the entire field should be free and open both for the packer and for the wholesale grocer, as well as for any other competitor or prospective competitor."

The wholesale grocers have not always been of the opinion that the competition of any of the packers in the wholesale grocery business was such as to cause any fear. In one of their trade journals, called The Wholesale Grocer, issued in November, 1920, nine months after the consent decree was in effect, an article was published under the heading, "Grocers not made with money," which stated in part as follows:

"Armour has very clearly demonstrated some old truths in his attempts to use his good name as a meat packer to promote other business activities. His grocery business has been a failure. The Armour Grain Co., the coffee branch of his general grocery venture, and other activities closely allied with the general wholesale grocery business, all have failed of success in spite of good national advertising and almost limitless bank account set aside for the promotion of the grocery venture.

197 Armour, the trained meat packer and experienced financier, has been able to create a wonderful machine for the buying, selling, packing, and distribution of all manner of meat products. Economy and efficiency operate everywhere, and work smoothly, too, in every branch of the Armour meat industry. Experts for the various departments of the business are under the supreme direction of an expert head of the business. The public know Armour the packer. Armour is identified with good meats and good service. The people know his meats and his service. The people cannot think of him seriously in other lines of business activity.

The Armour people somehow did not understand that the wholesale grocery business requires peculiar business machinery, just as the meat packing business does, and that the tried and successful policy of the packing industry cannot be applied with success to the grocery business.

The wholesale grocers cover the entire country thoroughly, and when they undertake to distribute the manufacturers' specialty products, they are able to back up the manufacturers' national advertising campaign. Armour with his distributing houses could not near cover the retail trade of the country, and give force to his national advertising.

Paragraph XV

Your petitioner further avers that the wholesale grocers were and are charging the canners far too much to distribute canned goods, and California producers of dried and canned fruits particularly know that this was and is true. One of the chief objections urged by the wholesale grocers against the reentry of the packers in distribution is that the packers would follow the practice of handling only those groceries in which there are good profits, and that if the profits on these certain lines were reduced by competition, the wholesale grocers would be put out of business. They insist that the producers of canned and dried fruits, canned vegetables, and other items, on which they make large profits, must continue to be at their mercy, and that the public must continue to pay extortionate prices for canned goods, in order that they may make these profits. Your petitioner avers that 37 cents of the consumer's dollar represents the cost of producing the article and the cost of the material that goes into it, that 14 cents thereof represents all the profits, and that the remaining 49 cents thereof represents the cost of distribution service. The producers and consumers are insistent that this cost of distribution service shall be reduced, but as the wholesalers are the hub around which the whole system of distribution is built, they are resisting to the utmost any method or means by which the people will be able to save at least a part of the 49 cents which they are compelled to pay for distribution service, out of every dollar which they are forced to spend for necessaries. In September, 1921, both the retail and wholesale prices of food in this country were approximately 50 per cent higher than in September, 1913, although farm prices

were in most instances lower in 1921 than in 1913. If the decree in this cause be not promptly vacated or modified, the very extensive and economic facilities of the packer defendants for food distribu-
198 tion will entirely disappear, and the producers and consumers will be left at the mercy of the wholesale grocers, as no system of distribution other than theirs will be available. The destruction of the packers' highly efficient, expeditious, and economical system of food distribution will not tend to bring the cost of food back to normaley, nor will the denial, in the future, of the rights to use such facilities keep down the high cost of food. The decree in this cause prohibits certain corporations and individuals from engaging in businesses which are open to all others, and efficiency has been almost destroyed. A continuance of the decree is not in the best interests of the public, but is seriously injurious to the producer, the packer, and the public, and serves only the selfish purposes of the wholesale grocers. There are some 300 concerns engaged in this country as meat packers and in the scientific handling of meats in inter-state distribution, and they have developed the most modern and economic method of distribution ever established. It is entirely against the interest of the public and the producers to withdraw the facilities of the meat packers from public use in the unrelated commodities. The public cannot be benefited by destroying the competition thus created and leaving the entire system of distribution service exclusively in the control of the wholesale grocers.

Paragraph XVI

Your petitioner further avers that the most simple solution of the intolerable effect produced by the said consent decree is to vacate it in its entirety, or at least so to modify it as to restore to the producers the use of the packers' facilities for distribution. Your petitioner, on information and belief, avers that at least two of the packer defendants, namely, Armour & Company and Wilson & Company, are willing to distribute food products on a commission basis, if permitted so to do. By this method, the speculative feature in the handling of foods would be absolutely eliminated, and the producer would be in direct competition with all food speculators. This plan, which your petitioner believes would meet the approval of the Department of Agriculture, would enable the producers, canners, and food manufacturers to reach the small dealers at the lowest possible cost, while the consumption of the products would be increased because of the lower prices, and thus both the producing and consuming classes would be benefited. The cost of handling by the packers decreases as their volume of business increases, and the producers profit by the saving in the cost of distribution.

Your petitioner avers that producers, canners, and food manufacturers, and especially those that are not large enough to support complete sales and distributing organizations, should be allowed to avail themselves of the sale and distributing facilities which the

packers have, to assist them in disposing of their products. The use of the packers' facilities would enable the small producing units to compete with large organizations on a much more equal basis than now prevails.

199 The restriction of the volume of business of the meat-packing concerns, by compelling them to handle meat and related products only, increases the cost of meats to the consumer, and tends to reduce the price paid to the producer for livestock. In the field of production, manufacture, and distribution, the volume of business decreases the cost of operation, and the public interest therefore demands that the meat packers should handle the largest possible volume of business, in connection with their distribution of meats, in order to reduce the cost of operation.

Paragraph XVII

Your petitioner further avers that one of the most important economical problems is that of foreign export business. Through their distribution of meat products in foreign countries the packers have been compelled to establish, and have established, their own sales agencies throughout the world. Producers, canners, and food manufacturers, before the entry of the said decree, were enabled to take advantage of these most efficient means of foreign distribution. The decree absolutely prohibits the packers from exporting any foods other than meat and related products, and thus deprives the producers and manufacturers of food products of the best and most complete agency ever established in this country for the distribution of foods in foreign countries. The said decree, your petitioner again avers, was a grave economic mistake, and its effect has been disastrous to the best interests of the people at large, and has operated to the serious injury not only of the producers but also every individual in the United States, by destroying a large amount of export business. Moreover, your petitioner avers that the said decree is inconsistent with the provisions of the Webb Exporter Combination Act of April 10, 1918, 40 St. L. 517, for which reason also the said decree should be entirely vacated or radically modified.

Paragraph XVIII

Your petitioner further avers that all of the meat packers in the country are now under Federal supervision and control, in virtue of the packers and stockyards act of August 15, 1921, 42 St. L. 159, 163, and there is no reason why the defendants should remain under the supervision or control of this court in the conduct of their business. The meat packers have about 2,000 distributing houses, which they call branch houses, and about 500 of these houses are owned by the five principal packers who are enjoined by the said consent decree. In addition to these branch houses, the packers have refrigerator and route cars, which are sometimes designated as peddler

cars. The Federal Trade Commission, in reporting on this system of distribution, stated that by these peddler cars the packers are able to distribute products direct to some 37,000 points in the United States. As there are less than 3,000 cities and towns in this country having populations of 2,500 or more, and approximately only
200 28,000 incorporated towns, including many towns having a population of no more than 100, the meat packers, through this system of car distribution, are able to reach practically every point where foods are sold. In addition, many of the packers have supplemented these cars with trucks, running from their branch houses and packing plants to near-by points, and thus furnish retail dealers, hotels, and other supply houses a most perfect and well-organized service.

A Member of Congress from the Middle West recently expressed his views about the said consent decree in the following words:

"Since the packers have been put under the supervision of the Secretary of Agriculture, the alleged necessity for this decree disappears. The entry of the decree to my way of thinking was not justified under any circumstances. When the packer legislation was before the House, I stated my position in regard to the decree at some length. It is my opinion as a lawyer that the decree is void because it was beyond the jurisdiction of the court to enter it. The court doubtless had the right to forbid restraints of trade, etc., but there is no law of the United States which authorized a court to enter judgment forbidding anyone from engaging in a certain line of business. If there is no law pursuant to which a court can make such a judgment, then the consent of the parties can not confer the jurisdiction. If it should be deemed necessary for the common good that persons in one line of business should be prohibited from engaging in other lines of business—a very delicate question—it should be so declared by the legislative branch of the Government. I can not be accused of being friendly to the packers, but I take the liberty of urging that for the reasons stated the decree should be set aside, or at least that part of it which prohibits them from carrying certain commodities in their refrigerator or other cars."

Your petitioner further avers that the said decree is not based upon any law, is not justified by any facts, and operates against the economic advantage of the producer and the consumer and the people at large, and should therefore be entirely vacated or radically modified.

Paragraph XIX

Prior to November 17, 1921, your petitioner made an application to the Attorney General that he move the modification of the consent decree in this cause, under which application an interdepartmental committee of three persons was selected to conduct a hearing, one of whom was selected by the Attorney General, one by the Secretary of Agriculture, and one by the Secretary of Commerce. The wholesale grocers were fully and ably represented in the said hear-

ing, but were wholly unable to present any evidence as to the existence of any monopoly or combination in restraint of trade by the defendant packers, and the Federal Trade Commission was likewise unable to present any such evidence, although the said committee repeatedly requested the production of such evidence, if the charge of monopoly or a combination in restraint of trade was based upon any facts supporting it.

201 As hereinbefore alleged, the defendant Armour & Company has about 400 wholesale or branch houses throughout the United States, which, together with its route car service, is about 8% of the country's grocery distributing facilities. These facilities have been built up over a long period of years, through the patronage of the people, and the people should have the right to enjoy to the fullest extent the economies and the expedited service which Armour & Company is capable of providing. Instead of handling less than 1% of the total volume of rice consumed in the United States in 1917, as hereinbefore set forth, the best interests of the producers and consumers would have been served if Armour & Company had handled at least 8% of the volume of rice, as such percentage would have equaled only its proportion of the nation's grocery distributing facilities.

Before the said committee the wholesale grocers contended that if the said decree be set aside, the packers will control the food supply and drive the wholesale grocers out of business, but no proof was presented in support of such contention. They further contended that the five principal defendant packers control the trade in meat and related products, but presented no proof to support such contention. As hereinbefore averred, the effect of the said decree was to bring about a monopoly in the food supply by turning over the grocery business of the meat packers to the wholesale grocers. Throughout all of the various proceedings in this matter, the wholesale grocers have shown remarkable combination and unanimity of purpose to prevent the vacation or modification of the said decree, and your petitioner avers that their object is merely to retain and enlarge the monopoly in the grocery lines which the said decree created for them. The wholesale grocers have both the canners and manufacturers of foodstuffs and the retail dealers at their mercy, through their advances of money or credit, since the elimination of the packers from competition with them. In one instance, before the said committee, a wholesale grocer appeared in opposition to the modification of the said decree, and it developed that the reason for his opposition was that the defendant Armour & Company had entered his field of operation, and by competition compelled him to pay the growers in his district a fair price for their products. The wholesale grocers have no care for the welfare or interest of the general public, but seek to promote their own selfish interests only. In another instance, before the said committee, the wholesale grocers charged that the defendant Cudahy Packing Company was building enormous canning

factories in the Hawaiian Islands, and proposed to control the canned pineapple industry, whereas, as a matter of fact, the said Cudahy Packing Company had no interest whatever in pineapple canneries, never had any such interest, and never contemplated going into the pineapple business. No farm organizations appeared before the said committee in opposition to the modification of the said decree, but many such organizations, representing millions of producers, asked the Department of Justice to move for such modification.

The wholesale grocers further contended that the only way the said decree could be vacated or modified was by an act of
202 Congress declaring that the packers should have the right to handle all lines of foodstuffs, but as Congress can not vacate or reverse the decisions of the courts, and as no legislation is required to permit the packers to engage in the lawful conduct of lawful business, such contention is unfounded. The said decree has never met with the approval of any of the agricultural committees in Congress, but has been strongly disapproved. Moreover, the wholesale grocers claim that they were the prime movers in having the said decree passed, and before the said committee one of their attorneys stated as follows:

"The original decree resulted from complaints made primarily by wholesale grocers. After these complaints were made, the President directed the Federal Trade Commission to institute an investigation, which, having been had, was referred to the Department of Justice, and that department continued the investigation and determined its course. It has determined, and was proceeding with that determination, that criminal indictments ought to be obtained. Proceedings were begun in Chicago and in New York. Pending those proceedings, the proposition for this consent decree was made.

As hereinbefore set forth, the Attorney General expressly stated that the object of the grand jury investigations in Chicago and New York was to elicit further evidence in behalf of the Government, and not for the purpose or with the expectation of securing indictments by the said grand juries. However, following the complaint made by the wholesale grocers, the Federal Trade Commission began a most unusual and sensational publicity campaign in conjunction with the investigation which they undertook. The said commission employed a highly sensational investigator and conducted its investigation entirely as an ex parte proceeding. Books, records, other papers, and even private correspondence, were seized and examined by the agents of the Federal Trade Commission, and highly-colored and misleading reports of the investigation appeared daily under glaring headlines in the newspapers throughout the United States, the purpose of which was to prejudice the people of this country and foreign countries against the meat packers in the United States, and generate the suspicion that there was something radically wrong in the management of the meat-packing industry. Such publicity campaign had in fact the intended effect, and eventually foreign countries

instituted investigations for the purpose of inquiring into the truth of the allegations and charges made by the Federal Trade Commission and its agent. One of such investigations, as hereinbefore stated, was made by Great Britain, and the charges promulgated by the Federal Trade Commission and its agents were found untrue. These public attacks on the packers and their methods of doing business resulted in great damage to their business in this and foreign countries, brought about a rapid depreciation of their securities, and, in some instances, the destruction of their trade in foreign countries, and if such attacks had continued much longer, they might have resulted in the bankruptcy of these concerns. The real reason, and the only reason, why the defendant packers consented to the said decree, with the reservations therein contained, was to put an
203 end to such unfair and destructive attacks, and yet, even under most compelling circumstances, they refused to consent to the said decree, except upon the basis of an agreement between them and the Attorney General that they had committed no violation of law.

The farmer and the producer are well acquainted with the so-called "Law of diminishing returns," their profits having diminished nearly to the vanishing point, and their returns being evidenced by ever increasing losses,—this in face of the fact that the cost of the distribution of their products, and the spread in price between the producer and consumer, continually increased, due to the uncoordinated, unintelligent, and wasteful system of distribution conducted by the wholesale grocers, under whose domination the people of this country have been and still are suffering, by reason of the said decree. The wholesale grocers' system of distribution is one of monstrous profiteering, at the cost of the producer and consumer. They refuse to better their own antiquated methods of distribution, if they can do so, and they also refuse to allow any one else to operate a better system. At one time, they declare that the packers' business is not economic in its operation, and at another time, they declare that the packers' methods of distribution are so efficient and economical that the wholesale grocers will be unable to compete in price, and therefore will be driven out of business, and at another time they declare that the packers have passed the point of economic operation on account of their size, and are therefore subject to the so-called "Law of diminishing returns." Despite these theories, the fact is that the packers are able to market food products at a less cost than can the wholesale grocers, or other middle men, or speculators. The wholesale grocers charge that the large packers are unable to operate as cheaply as some of the smaller concerns, but this is accounted for by the fact that the business of the large packers is chiefly interstate. They buy, assemble, and slaughter the surplus products of the Middle West, and, after preparation of these products, deliver them to far distant points where the local product is inadequate to supply the needs. The smaller concerns are at no such expense, as their livestock is bought locally, and sold locally, and there is no heavy expense of icing, freight, and distribu-

tion to distant points. The large packers must perform this service of handling, transporting, and delivering these products long distances, and compete with the local slaughterer, who is under no such additional cost or expense. Assembling, slaughtering, and preparing meat food products, produced in the stock-raising districts of the West, and delivering those products to the consuming centers of the East, where little livestock is produced, represent a vast undertaking, and can be accomplished only by large organizations, which of necessity must operate with great efficiency, if they are to serve the public satisfactorily with wholesome and healthful food. The enormous additional expense involved in rendering this very essential public service necessary reduces the percentage of profits below that secured by local slaughterers, notwithstanding the fact that the operation of the large unit is much more efficient and economical.

Your petitioner further avers that during the hearing be-
204 fore the said committee, the wholesale grocers contended that by reason of the allowance of their intervention in this suit, they are now parties to the cause, upon the theory that the Government had represented them before, and they were parties with special interest in the decree, and had the right to resist a modification of it, that while not nominally parties, they were actual parties at interest. One of their attorneys further stated to the said committee as follows:

"So far as the Southern Wholesale Grocers' Association were concerned, we insisted that we participate in the conference with the Attorney General, and we participated in the decree, although not nominally or actually parties, and we were admitted as parties on the ground that our special interests were involved, and we had a right to preserve that decree, the Government having acted for us as a beneficiary; so that I would insist that there is no modification of the agreement at all, but that certain beneficiaries for whom the trustee had acted had been allowed to maintain the benefits of the decree for themselves."

Thus the wholesale grocers charged in effect that the United States, through the Attorney General, instituted and prosecuted this suit for their benefit, and their benefit alone, and acted merely as a trustee for them, and their charge carries with it the insinuation that the farmers, fruit growers, canners, manufacturers of foodstuffs, packers, producers, and consumers were sacrificed for the selfish interests of the wholesale grocers. The interests of the people at large are diametrically opposed to those of the wholesale grocers, who dominate and direct the heads of the great middle-man organizations of this country, and who make their profits by the exaction of extortionate tribute from both the producer and consumer. The said charge of the wholesale grocers also carries with it the insinuation that they used the Government of the United States and its Attorney General, and this court, to destroy their most efficient competitors. In any event, your petitioner avers that all other parties in interest that would be substantially affected by the said decree should have been

afforded an opportunity to be heard before its entry. Both the Federal Trade Commission and the Department of Justice, by reference to the packers' files and records, to which they had free access, could have easily secured, and probably did secure, the names and addresses of many persons, firms, associations, organizations, and corporations, whose interests would be adversely affected by the said decree, but none of them was notified of the proposed decree, nor given any opportunity to be heard against it, while the Southern Wholesale Grocers' Association, and that Association alone, was called into conference, according to its declarations, as above set forth. If the said charge of the wholesale grocers means anything at all, it means that the said consent decree was not based upon any consideration or adjudication of the law or the facts but was in reality the result of an agreement forced upon the packers, which they were compelled to sign to save their business from destruction. Indeed, one of the attorneys for the wholesale grocers stated to the said com-
205 mittee as follows: "I, under this record, would have dissolved the corporations and put them entirely out of business everywhere." The wholesale grocers in effect declare that the said agreement was in reality made between them and the packers, with the Attorney General acting in effect as the agent and trustee of the wholesale grocers, yet they admit that a contract or agreement between the grocers and the packers, embodying the provisions of this decree, would be invalid, because in restraint of interstate trade and commerce, and as creating a monopoly.

Your petitioner further avers that the handling of the unrelated commodities by the packers is not in itself unlawful, and their manner of handling it was not unlawful, and the Government so admitted by the aforesaid stipulation and the provisions of the said decree. Your petitioner further submits that no court has power or jurisdiction to prohibit any person, firm, corporation, or other organization from conducting any lawful business in a lawful manner, but such is the direct effect of the said decree prohibiting the packers from handling the unrelated lines. The large defendant meat packers are each separate corporations, having no relation one with the other or others, and no facts are alleged showing any combination in restraint of trade or commerce, or any monopoly. They are not organizations built up by the combination of many smaller organizations, but each corporation is complete in itself. While this court can enjoin combinations in restraint of trade or commerce, or producing a monopoly, it is without power to prohibit any of the defendants from conducting a lawful business in a lawful manner. In addition, as hereinbefore alleged, the Webb Exporter Combination Act of April 10, 1918, 42 St. L. 517, permits associations and combinations of individuals and corporations, for the purpose of exporting, and it allows such combinations whether the parties thereto were or were not previously engaged in the export business, and the statute

is not confined to enabling only previously existing export corporations to combine.

Your petitioner further avers that it seeks the restoration of its rights, and the protection of its property, and that it be allowed to distribute its goods through the defendant Armour & Company, as formerly, in accordance with the terms and provisions of the aforesaid contract.

Paragraph XX

Your petitioner further avers that the said committee, after hearing the various parties in interest, made a report to the Attorney General in the words and figures following:

Report of the interdepartmental committee on the question of a modification of the consent decree in the case of United States of America v. Swift and Company and others with reference to unrelated commodities

To the Honorable the Attorney General:

Your committee, consisting of Bayard T. Hainer, selected by
286 the Secretary of Agriculture at your request, Frank C. Hall, selected by the Secretary of Commerce at your request, and Herman J. Galloway, selected by you to conduct a hearing upon the question of a proposal to modify the consent decree entered by the Supreme Court of the District of Columbia on February 27, 1920, in the suit of the United States of America v. Swift and Company and others, in equity, by removing the restrictions and prohibitions upon the defendants with reference to the manufacture, handling, and distribution of the unrelated commodities referred to in said decree, submits the following report.

The committee, before entering upon the hearing, gave full notice to the parties interested and to the public generally of the time, place, and the purpose of such hearing, and extended an invitation to all of those interested, including the Federal Trade Commission, to present their views if they so desired.

Pursuant to the plan for such hearing, written communications expressing the views of interested parties were received by the committee up to and including November 18, 1921. Several thousand of such communications were received. Also, pursuant to the plan for such hearing, and in accordance with the notices given, oral hearings were held by the committee beginning November 28, 1921, and concluded with a hearing on December 15, 1921, fifteen days being consumed in the actual taking of testimony. At the conclusion of the testimony, January 12, 1922, was fixed as the time for hearing oral arguments and for the filing of briefs. At the oral hearings fifty-six (56) witnesses appeared and were heard, and the stenographic transcript of this hearing covers 4,076 pages and is submitted herewith.

Your committee has carefully examined and considered all testimony and communications received in this matter, together with the arguments and briefs and is of the opinion that the following questions are raised for consideration:

1. Did the court have jurisdiction to render a valid decree in this matter, in view of the allegations in the answers and of the statements in the stipulations and decree that—

"* * * while the defendants, and each of them, maintain the truth of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered *without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself shall not constitute or be considered an adjudication that the defendants, or any of them, have in fact violated any law of the United States.*" (Italics ours.)

2. Did the court have jurisdiction to grant the relief awarded in this decree, as to unrelated commodities, in view of the contentions that—

207 a. The bill does not allege any violation of law with reference to unrelated commodities.

b. The relief granted is an absolute prohibition of the corporate defendants in engaging in the manufacture and distribution of unrelated lines and is not confined to a restraint of the defendants from committing unlawful acts in carrying on this business, which is not of itself an unlawful business.

c. The relief granted is broader than either the allegations of the bill or the relief prayed for therein.

d. The decree imposes penalties in excess of those authorized by the antitrust laws. The remarks of Chief Justice White, at pp. 77 and 78 in the decision in the case of Standard Oil Company v. United States of America, 221 U. S. 1, are urged upon the committee in support of this contention. Such remarks are as follows:

"As penalties which are not authorized by law may not be inflicted by judicial authority, it follows that to meet the situation with which we are confronted the application of remedies two-fold in character becomes essential. 1st. To forbid the doing in the future of acts like those which we have found to have been done in the past which would be violative of the statute. 2nd. The exertion of such measure of relief as will effectually dissolve the combination found to exist in violation of the statute, and thus neutralize the extension and continually operating force which the possession of the power unlawfully obtained has brought and will continue to bring about.

"In applying remedies for this purpose, however, the fact must not be overlooked that injury to the public by the prevention of an undue restraint on, or the monopolization of trade or commerce is the foun-

dation upon which the prohibitions of the statute rest, and moreover that one of the fundamental purposes of the statute is to protect, not to destroy, rights of property."

3. Is the decree as to the unrelated commodities proper in view of the fact that the Federal Trade Commission, in the testimony given at the hearing, stated that they have no evidence of a monopoly by the defendants or of a combination or conspiracy among the defendants with reference to unrelated commodities, but that they justify such decree upon the ground of the menace of the potential power of the defendants to acquire such a monopoly (see pages 2143, 2148, 2149, 2150, 2170, 2171, and 2304 of hearing before Inter-Departmental Committee), and in view of the further fact that the Supreme Court of the United States, in the case of United States of America v. United States Steel Corporation and others, 251 U. S. 417, decided on the first day of March, 1920, after the entry of the decree in this case, at pp. 450 and 451 of such decision, says:

"The Government, therefore, is reduced to the assertion that the size of the corporation, the power it may have, not the exertion of the power, is an abhorrence to the law, or as the Government says,

'the combination embodied in the corporation unduly restrains
208 competition by its *necessary effect* (the italics is the emphasis of the Government) and therefore is unlawful regardless of purpose.' 'A wrongful purpose,' the Government adds, is 'matter of aggravation.' The illegality is statical, purpose or movement of any kind only its emphasis. To assent to that, to what extremes would we be led? Competition consists of business activities and ability—they make its life; but there may be fatalities in it. Are the activities to be encouraged when militant, and suppressed or regulated when triumphant because of the dominance attained? To such paternalism the Government's contention, which regards power rather than its use the determining consideration, seems to conduct. Certainly conducts we may say, for it is the inevitable logic of the Government's contention that competition must not only be free, but that it must not be pressed to the ascendency of a competitor for in ascendency there is the menace of monopoly.

"We have pointed out that there are several of the Government's contentions which are difficult to represent or measure, and, the one we are now considering, that is the power is 'unlawful regardless of purpose,' is another of them. It seems to us that it has for its ultimate principle and justification that strength in any producer or seller is a menace to the public interest and illegal because there is potency in it for mischief. The regression is extreme but short of it the Government cannot stop. The fallacy it conveys is manifest."

4. It is also urged that the operation of the decree with respect to unrelated commodities is a restraint of trade and commerce in such lines and is, therefore, in conflict with the purpose and intent of the antitrust laws.

5. The further contention is made that the enforcement of the decree works an injury to the public generally and especially to producers, growers, and canners of fruits and vegetables in that it deprives them of one method of distribution of their products, which method was formerly open to them and entirely eliminates the defendants as one class of competitors, leaving only one other class, namely, the wholesale grocers, to dominate the entire field of distribution.

6. It is also contended that the decree with respect to unrelated lines is contrary to public policy in that it prohibits and restrains the defendants from engaging in export trade of the farm products of the United States and would also hinder and prevent the defendants from participating in the organization or operation of such an export company, as is authorized by the Webb Export Trade Act.

7. Is the retention of the provisions of this decree with reference to unrelated commodities contrary to public policy or do such provisions longer serve any useful purpose in view of the fact that it is contended that the "packers and stockyards act 1921," enacted by Congress since the entry of this decree, confers upon the Secretary of Agriculture full power and jurisdiction to supervise and regulate the activities of the meat packers with reference to the unre-
209 lated commodities mentioned in the decree, as well as other matters, and thus fully protects the public interest therein?

There are several other questions of more or less importance raised and presented in the consideration of this request for a modification, which it is unnecessary to here state.

All of the questions presented by this request for a modification and at the hearing conducted thereon were strenuously opposed and ably argued by counsel for the wholesale grocers.

Your committee has come to the conclusion that such grave and far-reaching questions, which affect not only the provisions of the decree with respect to unrelated commodities but which also strike at the very foundation of the entire decree and are of such vital interest to the public generally are matters which, regardless of what position the Attorney General might assume, must be ultimately decided by the court which entered the decree before any modification could be made, and as those who most strongly oppose any modification (namely, the wholesale grocers) are now parties to this cause, by intervention, which intervention has been sustained by the court since the request for this hearing before the Attorney General was granted, it seems that the way is now open for those who urged a modification and who so earnestly contended that they have been seriously injured by this decree and have never had their day in court, to present such questions and contentions in the first instance to the court for decision without the same being in any way prejudged by the Attorney General.

Therefore your committee feels that this request by the California Cooperative Canneries Company and others for a modification of

this decree should be presented in the first instance to the court which entered this decree and not to the Attorney General.

Respectfully submitted.

BAYARD T. HAINER,
FRANK C. HALL,
HERMAN J. GALLOWAY,
Chairman Interdepartmental Committee.

JANUARY 20, 1922.

Paragraph XXI

In answer to Senate Resolution No. 211, of February 3, 1922, the Attorney General transmitted to the Senate the following reply:

To the Senate of the United States:

In answer to the resolution of the Senate of the United States being Senate Resolution 211, dated February 3, 1922, I beg to transmit the following:

Such resolution provides "that the Attorney General of the United States be requested to report to the Senate what steps, if any,
210 have been taken to enforce any carry out the terms of said decree," being the decree entered by the Supreme Court of the District of Columbia on February 27, 1920, in the suit of the United States of America v. Swift and Company and others, in Equity No. 37623, a copy of which decree is attached hereto and marked "Exhibit A." This decree, among other things, prohibits the defendants from owning capital stock or other interest in public stockyard market companies, stockyard terminal railroads, or stockyard market newspapers, and provides that within ninety days from the entry of such decree such defendants as have any such interest shall file in court a plan or plans for divestment of their interests. It is also provided that if the defendants shall not have disposed of their interests within the time so fixed by the court, and the court upon application shall determine that such defendants have been unable, despite due diligence, to dispose of the same upon reasonable terms, the court may extend the time during which such ownership may continue until the defendants dispose of those interests.

In accordance with the provisions of this decree the defendants filed in court plans for the sale of these interests, and one set of such plans consisted of an offer for the purchase of the same, but upon objection by the Government these plans were rejected by the court. The defendants have since fil'd oth'r plans, among which were plans for offering such holdings for sale to the public through designated sales agents with a fixed minimum price at which such sales might be made, but these plans, upon the objection of the Government, were likewise rejected by the court. Some small blocks of stock and some stock in small stockyard companies have been disposed of under said decree, and such dispositions have been approved by the court. The Government then filed a petition urging the court to take over these holdings and appoint a trustee or receiver to dis-

pose of them, and after argument the court, in a memorandum of decision, indicated that it felt the defendants should have reasonable opportunity to dispose of their own holdings and that whether the defendants had been given such a reasonable opportunity depended upon the adequacy of the offers for such stock which had been made to such defendants; that in order to determine this the court must know the value of such holdings, and therefore the court ordered the taking of testimony to ascertain the value thereof.

The Morris group of defendants then filed a plan substantially like that adopted by the court in the case of the United States v. the Union Pacific Railroad Company. This plan requested two and one-half years' time for disposing of the holdings, and after objection to the same by the Government the court approved it, with modifications. The plan as modified provided for one year within which the defendants were to dispose of their holdings; in the meantime the stock to be deposited with a depositary and not to be voted except upon order of court, the dividends to accumulate in the hands of such depositary during the life of such plan.

The Wilson group of defendants filed a plan similar to the plan of the Morris group of defendants, which was also approved by the court with some modifications.

211 The stockyard holdings of Cudahy group of defendants were not large and they have disposed of considerable of their holdings, which dispositions have been reported to and approved by the court, and they are now engaged in an effort to sell the remainder of their stockyard holdings.

The Armour and Swift group of defendants filed new plans which are substantially alike and which were approved by the court. These plans granted one year within which such defendants were to dispose of their holdings. During the life of the plan the stock held by such defendants was to be deposited with a depositary appointed by the court. The court also, under this plan, appointed Honorable George Sutherland, of Salt Lake City, Utah, and Honorable Henry W. Anderson, of Richmond, Virginia, as trustees to vote the stock coming under such plans and gave to such trustees certain visitorial and inquisitorial powers over the stockyards coming under these plans. The trustees, shortly after accepting their appointment, accompanied by a representative of the Department of Justice, made a trip of inspection of the yards in which they were interested and conducted public hearings at the places which they visited. The trustees then made a report to the court as to the results of such investigation, in which they reported the yards were well managed and operated and that there was no reason for a change in management. The approval by the court of these plans abrogated the prior order of the court for a valuation of such holdings.

None of the plans approved by the court have as yet expired and the extensions of time contained in such plans were allowed by the court upon a showing by the defendants that they had used due diligence in their effort to sell such interests, but they have been

unable to sell the same at any reasonable price, principally because of the difficulty, if not impossibility, of disposing of such large holdings during the unsettled business conditions which have existed practically continuously since the entry of this decree.

The decree also enjoins the corporation defendants from using their distributive facilities in any manner for the purchase, sale, handling, transporting, distributing, or otherwise dealing in certain commodities commonly referred to as "unrelated" to the meat-packing industry, which commodities are enumerated in such decree and are principally wholesale grocery lines. The decree also enjoins the corporation defendants from engaging in or carrying on, either for domestic or export trade, the manufacturing, jobbing, selling, distributing, or otherwise dealing in such unrelated commodities, and their owning any capital stock in corporations engaged in manufacturing, selling, distributing, or otherwise dealing in such unrelated commodities. The individual defendants are enjoined from owning, severally or collectively, voting stock aggregating 50 per cent or more in any corporation, or a half interest or more in any firm or association, which corporation, firm, or association is engaged in manufacturing, jobbing, selling, transporting, distributing, or otherwise dealing in certain unrelated commodities enumerated
212 in such decree, which enumeration omits some of the articles prohibited to the corporation defendants. The decree also provides that the defendants should at once begin to dispose of their stocks of unrelated commodities on hand, and the capital stocks of corporations, or interests in firms and associations handling, etc., such unrelated commodities, which defendants are prohibited by the decree from owning, and the defendants shall continue to dispose of these goods and interests as rapidly as may be consistent with the nature of the business, but at all events should have completely disposed of the interests connected with unrelated lines within two years from the entry of the decree. The time for the complete divestment of the defendants of the prohibitive holdings with reference to unrelated lines has not yet expired. However, some holdings of defendants in some corporations dealing, etc., in such unrelated lines have been disposed of by defendants and such dispositions have been reported to and approved by the court. The defendants, upon the entry of the decree, began a process of elimination of the stocks of merchandise of the prohibitive unrelated lines and the Department of Justice is now informally informed that some of such interests have been completely eliminated and others about so, and that when the time for complete divestment of these interests expires the Department of Justice believes it will then be its duty to require a formal showing in court as to such matters. The Armour group of defendants on February 2, 1922, made a showing by a petition to the court that due to the present financial conditions of the country they had been unable as yet to dispose of their interests in certain factories manufacturing such unrelated commodities and asked an extension of time of one year for complete divestment of their unrelated lines.

The court granted to such Armour group of defendants an extension of time of six months on these matters, the Government consenting to such six months, but not a year's extension.

The Department of Justice has also been asked to request the court to modify this decree with reference to unrelated lines, all of which will be more fully discussed hereafter in this report.

The decree also prohibits the defendants from owning, operating or conducting retail meat markets except those conducted by defendants at their several plants for the accommodation of their employees. The decree provides that the defendants shall, within nine months, completely divest themselves of such prohibited interests in retail meat markets. After an investigation the Department of Justice has secured no information showing that defendants now own, operate, or conduct any retail meat markets, except those which they are permitted to maintain under this decree, and the department is advised that the defendants do not now own, operate, or conduct any such retail meat markets. Therefore no activity upon the part of the Department of Justice has, as yet, been necessary in carrying out this portion of the decree. The department expects to continue its efforts to learn of any such holdings.

The decree also enjoins the defendants from owning any interest whatsoever in public cold-storage warehouses, now maintained by these defendants at stockyards where they maintain packing
213 plants and may own, maintain, or lease cold-storage facilities required for storage of commodities in which they may be interested. The decree also requires defendants within nine months to dispose of the prohibited interests in public storage warehouses. The information now in the hands of the Department of Justice resulting from careful investigation shows that only very small interests of defendants in public cold-storage warehouses are affected by this decree. Some of these interests consisted of such warehouses operated by defendants upon leased properties, the leases of which have been terminated since the entry of this decree and the operation of such warehouses abandoned by the defendants.

The decree also enjoins the corporation defendants from engaging in the business of buying, collecting, selling, distributing or otherwise dealing in fresh milk and cream and enjoins the defendants from owning any interest in any corporation, firm, or association engaged in such business. It is provided, however, that these injunctions shall not prevent such activities upon the part of the defendants in connection with their manufacture of condensed, evaporated, or powdered milk, oleomargarine, butter substitute, butter, ice cream, cheese, or buttermilk. The Department of Justice at this time after investigation has no information causing it to believe that these provisions of the decree are being violated, and is advised that the corporation defendants are not so dealing in fresh milk and cream and, therefore, no action by the department has, as yet been necessary in the enforcement of such provisions.

The provisions of the decree with reference to public stockyards, stockyard terminal railroads, and stockyard market newspapers were by the terms of the decree itself the first provisions requiring action and for this reason the efforts of the Department of Justice in the enforcement of this decree were at first centered largely upon these matters. Because of the difficulties encountered in disposing of these holdings and the importance to the public generally of the questions involved very careful consideration and study has been given to such matters.

The Senate resolution also requests the Attorney General to report to the Senate "what modifications, if any, has been proposed to him or is being considered by him with a view to his applying to the court for the adoption thereof."

Some time ago the California Cooperative Canneries' Company, a cooperative company owning fruit canneries the stockholders of which are fruit farmers and growers, represented to the Department of Justice that they had been selling their products (canned fruits) under a contract to, and thus using the distributing system of one of the defendant companies, namely, Armour & Company. They also contended that this decree deprived them of this outlet for their goods, decreased competition in the distribution of them, and they raised many other questions as to such decree. They requested the Attorney General to petition the court for a modification of this decree so as to remove the injunctions, prohibitions, and orders in such decree relating to unrelated lines. Should the court modify this decree as requested by these applicants it would mean the
214 elimination of the injunctions, prohibitions, and orders contained in paragraphs third, fourth, fifth, and twelfth of said decree, and those contained in the following part of paragraph eight of said decree, to wit:

"not specifically mentioned and described in paragraph fourth hereof;"

those contained in the following part of paragraph fourteenth of said decree, to wit:

"provided, however, that nothing in this paragraph contained shall limit the effect of the injunction contained in paragraphs fourth and fifth of this decree."

those contained in the following part of paragraph sixteenth of said decree, to wit:

"or corporation, firm, or association manufacturing, jobbing, selling, distributing, transporting, (except as common carriers), or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree."

and those contained in the following part of paragraph seventeenth of said decree, to wit:

"or incorporations, firms, or associations manufacturing, jobbing, selling, transporting, except as common carriers, distributing or otherwise dealing in any of the commodities mentioned and described in paragraphs fourth and fifth of this decree."

Following such request by the California Co-operative Canneries Company, several other interests including canners, manufacturers, some agricultural organizations and individual farmers requested that the decree be so modified. At no time have the defendants or any of them, or anyone claiming to represent the defendants or any of them, either moved in court or requested the Attorney General to move in court for a modification of such decree with reference to unrelated commodities. The Attorney General was considering the request for a modification of this decree when the representatives of the Southern Wholesale Grocers' Association and of the National Wholesale Grocers' Association requested to be heard by the Department of Justice upon this matter. Such hearing was granted before assistants of the Attorney General, at which time counsel for each association appeared and stated their contentions and requested a further hearing at which such associations might produce witnesses to substantiate their contentions. They were informed by those conducting the hearing that the Attorney General was then out of the city and upon his return in a few days their request would be presented to him for his action. The next day following such hearing, without the knowledge of or notice to the Department of Justice or any of its representatives, the Southern Wholesale Grocers' Association filed in court a petition for intervention and procured the
215 entry of an order allowing such intervention. Upon learning of this action the Government moved to set aside and vacate such order and to strike out the intervention. After argument, the court rendered its opinion upon this question in a memorandum of decision, which is as follows:

• • • • • • •

"Without deciding that petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petition it is fair and just that they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings but for the limited purpose stated in their petition, namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it, for the following reasons, when taken together:

"1. The decree was, in part at least, the fruit of their own efforts;

"2. They abandoned the pursuit of other remedies in reliance upon this decree;

"3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf;

"4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection;

"5. The decree ought not to be modified unless the court is convinced that the public interest requires it; and the petitioners fairly represent a large and well-defined portion of the public whose position will enable them, and whose interest will prompt them, to present to the court facts or reasons which, among others, the court ought to hear and consider before allowing the decree to be changed.

"This decision must not be understood as opening the door to all would-be intervenors who may consider themselves interested in the decree or any change therein, but as strictly limited to the facts alleged in this petition which are in law admitted by the motion to strike out. * * *."

Following this decision, the court allowed a similar intervention by the National Wholesale Grocers' Association.

Prior to this decision by the court the Attorney General determined to allow the hearings so requested by such wholesale grocers, and as the Department of Agriculture and the Department of Commerce are both vitally interested and greatly concerned with the economic questions which this request presented the Attorney General sought the cooperation and assistance of the Secretary of Agriculture and the Secretary of Commerce in determining this matter, and upon his request the Secretaries of Agriculture and Commerce, respectively, each appointed a representative to participate with the representative appointed by the Attorney General in this hearing. In pursuance of the plan for such hearing, the Attorney General caused to be sent to each person, firm, or corporation which had communicated with him, or whose communications to others had been referred to him, a letter of which the following is a copy:

216 HJG-mjb.

DEPARTMENT OF JUSTICE,
Washington, October 12, 1921.

DEAR SIR: I am directed by the Attorney General to acknowledge for him the receipt of your communication of recent date, expressing your views concerning any modification of the consent decree in the case of United States v. Swift and Company and others, being the so-called "Packers Case."

Of course, any modification of this decree would have to be made by the court which entered the same, and could not be made by the Attorney General or the Department of Justice.

A request has been made to the Attorney General by interests other than the packers, the more important of such interests being growers and canners of fruits and vegetables, that he favor and urge a modification of this decree so as to permit the packers to handle unrelated lines, especially wholesale grocery lines. The Attorney General is considering this request, and in order to enable him to come to a proper conclusion upon the same he has arranged for a committee, consisting of Honorable B. T. Hainer, selected by the Secretary of Agriculture, F. C. Hall, selected by the Secretary of Commerce, and the writer, selected by the Attorney General, to hear the contentions of both those opposing such a modification. After the hearing this committee will render a report, accompanied by the record of such hearing, to the Attorney General, who will then decide what his position will be upon this request.

The committee will receive written statements from anyone (including firms, associations, corporations, etc.) who may wish to present

the same, setting out their views as to such a modification, together with the reasons therefor. These statements should be mailed to the Attorney General, Washington, D. C., on or before November 18th, 1921.

Beginning November 28, 1921, and continuing so long thereafter as the committee may think necessary, the committee will hear, at the office of the Department of Justice at Washington, D. C., anyone who wishes to present orally their views upon this matter. Those desiring to appear personally and present orally their views should advise the Attorney General of such desire before November 18th, 1921, as an effort will be made by the committee to notify them of a definite time when they may be heard.

All matters presented, whether orally or in writing, will be given the most careful consideration.

Very truly yours,

HERMAN J. GALLOWAY,
Special Assistant to the Attorney General.

The progress of such hearing and the conclusions of the committee are shown by the report which was rendered by the committee
217 on January 20, 1922, a copy of which is attached hereto and marked "Exhibit B." This report was on such date presented to the Attorney General and copies thereof immediately furnished to the Secretary of Agriculture and the Secretary of Commerce, and after careful consideration of the same by the Secretaries and the Attorney General, and after several conferences with them upon the matter, on February 7, 1922, in agreement and in accord with the views of the Secretaries, the Attorney General approved such report and issued the following official statement thereon:

On the question of a modification of the consent decree in the case of United States of America v. Swift & Company and others, with reference to unrelated commodities, I have come to the conclusion that such grave and far-reaching questions which affect not only the provi'ons of the decree with respect to unrelated commodities but which also strike at the very foundation of the entire decree and are of such vital interest to the public generally are matters which, regardless of what position the Department of Justice might assume, must be ultimately decided by the court which entered the decree before any modification could be made, and as those who most strongly oppose any modification (namely, the wholesale grocers) are now parties to this cause, by intervention, which intervention has been sustained by the court since the request for this hearing before the Attorney General was granted, it seems that the way is now open for those who urged a modification and who so earnestly contended that they have been seriously injured by this decree and have never had their day in court, to present such questions and contentions in the first instance to the court for decision, without the same being in any way prejudged by the Attorney General.

Therefore, I feel that this request by the California Co-operative Canneries Company and others for a modification of this decree should be presented in the first instance to the court which entered this decree and not to the Attorney General.

* * * * * * *

Paragraph XXII

Your petitioner further avers that for the reasons specifically set forth in the aforesaid report of the said interdepartmental committee, and for the other reasons in this petition set forth, the said consent decree of February 27, 1920, should be entirely vacated, or it should be radically modified so as to permit the use of the packers' distributing facilities in the marketing of the unrelated commodities, either by allowing the packers to engage in dealing in such commodities as before the said decree was entered, or by allowing them to handle such commodities upon a commission basis, or in some other efficient way.

218 Paragraph XXIII

Your petitioner is advised that the wholesale grocers will deny its right to be heard by this court on the question of vacating or modifying the said decree, although they vigorously insist on their right to be heard in this suit for the protection of their alleged special interest, which is in reality the protection of the monopoly effected for them by the said decree; but your petitioner avers that it has a much more special and legitimate interest in this litigation than the wholesale grocers, and has much more right to intervention than they have, and as they have been allowed to intervene for the purpose of being heard in opposition to the vacation or modification of the said decree, your petitioner is entitled to intervene for the purpose of being heard in favor of the vacation or modification of the said decree, and particularly so because neither the plaintiff nor the defendants are willing to take any affirmative action in disturbing the said decree.

Paragraph XXIV

When the court was considering the question whether the Southern Wholesale Grocers' Association, the National Wholesale Grocers' Association, and others should be allowed to intervene in this suit, at the close of the oral arguments of counsel the court stated as follows:

"I should like to have counsel on both sides consider carefully whether the intervention, if granted, would have any effect upon the consent decree. The suggestion has been made that it would.

"Counsel will remember that the defendants never admitted any fact alleged in the bill, but, on the contrary, denied the existence of any facts that would entitled the Government to a decree. They consented to a decree, and the court proceeded upon the theory that the

jurisdiction of the court was determinable by the strength of the allegations in the bill.

"Counsel must not forget, however, that this decree may be somewhat technical in the fact that the court never found any fact upon evidence, and rendered a decree merely by consent of defendants, upon the strength of unproved allegations. If this intervening petition, or the petitions of other interveners, by adopting the allegations in the original bill, undertake to prove those matters of fact as facts, it may be that the defendants would then have a right to withdraw their consent, and go into the trial of the questions of fact."

Your petitioner avers that the foregoing ruling of this court is in effect a judicial suggestion that it may not have been within the power of this court, in the state of the mandatory record presented, to pass the said decree, and that it may not withstand an attack on its validity or the correctness of its provisions.

219 Prayers

The premises considered, your petitioner respectfully prays as follows:

1. That after due notice to all of the parties and interveners herein, and after an opportunity afforded them to be heard in the premises, an order may pass permitting your petitioner to intervene herein, for the purposes set forth in this petition.

2. That your petitioner may also be heard herein as amicus curiæ.

3. That the said consent decree of February 27, 1920, may be vacated in its entirety, or that it may be so modified as to allow the defendants to resume their dealing in the so-called unrelated commodities, as before the entry of the said decree, or to allow them to use their distribution facilities for the purpose of moving the same, either upon a commission basis or upon some other efficient basis.

4. That your petitioner may have such other and further relief in the premises as the court may deem just and proper.

And, as in duty bound, your petitioner will ever pray, etc.

CALIFORNIA COOPERATIVE CANNERIES,
By FRANK J. HOGAN, *Attorney.*

Duly sworn to by Frank J. Hogan; jurat omitted in printing.

In Supreme Court of District of Columbia

Answer and objections to motion to intervene of California Cooperative Canneries

Filed May 6, 1922

* * * * * * *

Come now Southern Wholesale Grocers' Association, Henry G. Sears Company, John Hoffman and Sons Company, Mason, Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing

Company, Hall Grocery Company, Albert Mackie & Co., Ltd., The Hicks Co., W. D. Cleveland & Sons, Rapides Grocery Company, and Oliver Finnie Grocery Company, by their attorney, Edgar
220 Watkins and file this their joint answer in law and in fact to the motion for leave to intervene presented by California Cooperative Canneries and to the intervening petition filed with said motion, and for cause why said motion should not be granted jointly and severally say:

Paragraph 1

These interveners being advised, submit that the motion to file the petition of intervention made by California Cooperative Canneries should not be granted for—

(a) That it appears from said petition of intervention that there is nothing now pending or proposed in this cause;

(b) That it appears from the petition of intervention filed by said California Cooperative Canneries as part of its motion herein that said proposed intervener is without legal interest in the decree heretofore entered in the main cause; and

(c) That it further appears that said decree was entered by consent and is a final decree over which this court has no jurisdiction other than jurisdiction to enforce said decree; and

(d) That it further appears that said petition of intervention states no sufficient facts to sustain a cause of action or support any relief on behalf of said intervener.

Paragraph 2

Further objecting to the motion to file an intervention by the California Cooperative Canneries, these interveners say that said intervention should not be granted for the following additional reasons, to wit:

(a) There is no suit pending. A final decree was heretofore on February 27, 1920, entered in this cause, as appears of record herein and as also appears in the said intervening petition here sought to be filed.

(b) Because the intervening petition sought to be filed by California Cooperative Canneries shows on its face that said corporation has no interest in this suit, paragraph 2 of the proposed intervention, which according to paragraph 3 thereof is the basis of the claim of interest, showing that the alleged contract set up in paragraph 2 is unilateral, without consideration, and void.

(c) Because said contract set up in said paragraph of the said proposed intervention in section 11 thereof is made subject to the regulations of the Food Administration, Federal Trade Commission, and other Federal agencies, and said contract being subject thereto is contrary to the regulations of the Food Administration and the decree of this court of February 27, 1920.

(d) Because it appears from paragraphs 4 and 12 of the proposed intervention that the claimed interest of the canneries under the control alleged in paragraph 2 has been terminated and can not now be enforced; the only remedy, if any, being a suit at law for the breach by Armour & Company of the said claimed contract.

221 (e) Because said proposed intervention shows on its face that the original defendants in this cause have obtained benefits from the said decree of February 27, 1920, by depriving these interveners hereinbefore named of rights which without said decree they would have had before the Interstate Commerce Commission.

(f) Because the motion to intervene herein and the intervention proposed to be filed therewith by the California Cooperative Canneries is in effect a bill of review or a supplemental bill in the nature of a bill of review, and the same was not filed within two years after the entry of the decree of February 27, 1920, as required by equity rule 62 of this court.

(g) Because of the laches of the proposed intervention in filing the motion here presented.

Paragraph 3

Interveners hereinbefore named object to granting the motion to file the intervention of the California Cooperative Canneries because a final decree was entered herein on February 27, 1920, and said proposed intervener is concluded by said decree and can not, under the law and principles of equity, become an intervener except in subordination to and in recognition of the propriety of the main proceeding heretofore had in this case, including recognition of and subordination to the validity and propriety of said decree of February 27, 1920.

Paragraph 4

Your interveners herein and named above object to granting the motion of said California Cooperative Canneries to file intervention herein and object to parts of said proposed intervention because such parts are impertinent and should not be considered or permitted to be filed. The impertinent parts are as follows:

(a) Paragraphs 8 and 9 of said proposed intervention should be stricken for impertinence, the matters therein stated, except as already of record in this cause, having no materiality to any issue herein.

(b) All the allegations of paragraph 12 of said proposed intervention, except possibly the first two paragraphs thereof, are impertinent and refer to matters in nowise material in this cause and should not be considered.

(c) All the allegations of paragraph 13 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(d) All the allegations of paragraph 14 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion should not be considered.

(e) All the allegations of paragraph 15 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(f) All the allegations of paragraph 16 of said proposed
222 intervention, except the second sentence thereof, are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(g) All the allegations of paragraph 18 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(h) All the allegations of paragraph 19 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(i) All the allegations of paragraph 20 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(j) All the allegations of paragraph 21 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(k) All the allegations of paragraph 23 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

(l) All the allegations of paragraph 24 of said proposed intervention are impertinent and refer to matters in nowise material in this cause or on this motion and should not be considered.

Without waiving their objections in law and praying the same benefit and advantage as though this were a case of a motion to dismiss the proposed intervention, these interveners, in answer to the said motion for leave to file, and answering said proposed intervening petition, jointly say:

Paragraph 5

Interveners being without knowledge are unable either to admit or deny paragraphs 1 and 2 of the proposed intervention; but as they do not know and can not set forth what the facts are, they pray that said paragraphs be taken as denied.

Paragraph 6

Interveners deny paragraph 3 of the proposed intervention.

Paragraph 7

Interveners are without knowledge as to how much, if any, of the output of California Cooperative Canneries claimed in paragraph 4 of the proposed intervention to have been taken by Armour & Company, was so taken, and as to the rest of said paragraph 4 interveners deny the same.

Paragraph 8

Interveners, answering paragraph 5 of the proposed intervention, admit that Armour & Company had prior to the entry of the decree herein, and by reason of special advantages growing out of
223 their ownership of private cars and the rates and privileges granted to them by interstate carriers, built up a large and efficient system for the distribution of those food commodities which by the decree herein they are enjoined from further distributing. Interveners, except Southern Wholesale Grocers' Association which is not engaged in buying or selling, admit that they were in competition, prior to the entry of the decree herein, with said Armour & Company in the distribution of such food commodities, and interveners, other than Southern Wholesale Grocers' Association, further say that they were also in competition with some five thousand other wholesale grocers in the distribution of the same commodities. Interveners admit that they have heretofore been given leave to intervene in this cause and have intervened herein. Any inference or statement in said paragraph 5 not in this paragraph admitted is expressly denied.

Paragraph 9

Interveners deny paragraph 6 of the proposed intervention.

Paragraph 10

Interveners, answering paragraph 7 of the proposed intervention, admit that the original decree was entered herein without process directed to the California Cooperative Canneries, but say on information and belief that said California Cooperative Canneries had full notice and knowledge through the public press, hearings before the Senate committee, and in other ways of what was proposed at least two months prior to the entry of said decree of February 27, 1920. These interveners being without knowledge can neither admit nor deny the allegation that Armour & Company and plaintiff and other defendants had notice of the alleged contract between the proposed intervener and Armour & Company, and these interveners are without information as to whether or not like notices existed as to similar contracts, but interveners do not believe that any knowledge of said claimed contract or contracts, if any such there were, existed outside the parties thereto and their agents.

Paragraph 11

These interveners admit that proceedings were had and testimony given similar to those alleged in the proposed intervention in paragraph 8 thereof. However, for greater certainty as to the contents of the documents, agreements, testimony, and statements referred to these interveners beg leave to refer to the original records.

Paragraph 12

These interveners admit that proceedings were had similar to those alleged by the proposed intervention in paragraph 9 thereof. However, for greater certainty as to the contents of the documents
224 and agreements referred to these interveners beg leave to refer to the original records.

Paragraph 13

These interveners deny paragraph 10 of the proposed intervention.

Paragraph 14

These interveners are without knowledge of the statements contained in paragraph 11 of the proposed intervention and pray, therefore, that the same be treated as denied.

Paragraph 15

These interveners are without knowledge as to the first sentence of paragraph 12 of the proposed intervention and deny all the rest of said paragraph except the following parts: They admit that the proposed intervener protested as alleged to the Attorney General and that a bulletin of September 22, 1920, a part of which is quoted in said paragraph, was sent out by Southern Wholesale Grocers' Association. As to the allegation of the statement of the Federal Trade Commission, interveners pray that the exact and complete record be looked into. Interveners admit that the proceedings described in 207 Fed. 434 were had, that the decision was rendered in 275 Fed. 725 as alleged in the proposed intervention, and that other similar cases are pending before the Federal Trade Commission. These interveners, however, deny that such allegations have any place in this cause and deny that the Southern Wholesale Grocers' Association or its president are now violating or have since the decision in 207 Fed. 434 in anywise violated the injunction granted by Judges Pardee, Shelby, and Jones. These interveners further deny that they or any one of them are now or have been since the entry of the decree in said 207 Fed. 434 engaged in any unfair methods of competition or in any act or acts which restrain or would tend to restrain or restrict the free flow of interstate commerce.

Paragraph 16

Answering paragraph 13, these interveners deny the same except as to the letters quoted therein as to which these interveners are without knowledge, and except as to the part of paragraph 13 referring to report of the Trade Commission, and these interveners pray, if said report be regarded as pertinent, that reference be had to the official report.

Paragraph 17

Answering paragraph 14, except as herein stated these interveners deny said paragraph. In so far as said paragraph quotes from the Federal Trade Commission, interveners pray that the official report be referred to if deemed pertinent to any issue in this case. Interveners admit that the cases of National Wholesale Grocers' 225 Assn. and Southern Wholesale Grocers' Assn. v. Walker D. Hines were heretofore pending before the Interstate Commerce Commission and that a decision therein has been rendered. These interveners admit that there are a large number of wholesale grocers, perhaps as many as 5,950. These wholesale grocers are in competition among themselves and furnish adequate distributing agencies for the distribution of all food commodities. They admit that the statement quoted as made by the counsel of the Southern Wholesale Grocers' Association was made. These interveners are without knowledge as to that part of paragraph 14 referring to the action of the National Wholesale Grocers' Association or its agents and are without knowledge and are not responsible for the alleged action of a trade journal called "The Wholesale Grocer."

Paragraph 18

These interveners deny paragraph 15 of the proposed intervention, except as to the statement of the number of meat packers as to which they are without knowledge.

Paragraph 19

Answering paragraph 16 of the proposed intervention, these interveners are informed and therefore admit that Armour & Company does desire to return to the distribution of those unrelated food items which it agreed it would discontinue distributing, and these interveners are informed and believe that in truth and in fact the proposed intervention herein is but the effort of Armour & Company, through the agency of California Cooperative Canneries, to escape from the results of that company's agreements and from the injunction the granting of which it consented to. Interveners on information and belief deny that Wilson & Company desires to evade or escape from the decree to which it consented. All the other parts of paragraph 16 of the proposed intervention are denied.

Paragraph 20

Answering paragraph 17 of the proposed intervention, these interveners say that they admit that the foreign export business is important and presents an economical problem; and say they are without knowledge of the extent of defendants' foreign business. The construction of the decree set up in said paragraph is a matter for the

court and is not an issue of fact, but these interveners do say that such decree was not a grave economical mistake but was a just and fair determination of the issues then before this court, and that the act of April 10, 1918, is not violated by such decree. Further answering, interveners say that said decree is a just injunction against practices unlawful under the laws of the United States and which practices were properly enjoined.

Paragraph 21

Answering paragraph 18 these interveners deny that the packers and stockyards act completely regulated the defendants in this
226 cause, and allege on information and belief that such act was made less restrictive against the defendants because of the decree herein, and that the defendants in this cause obtained the benefit of the decree herein in defeating a more restrictive act by the Congress. As to the part of said paragraph 18 referring to the report of the Federal Trade Commission, these interveners pray that such report be looked to and the language thereof taken if it is deemed that said report has pertinence to this cause. These interveners are without knowledge as to the alleged speech of an unnamed member of the Congress. All the other parts of paragraph 18 of the proposed intervention are denied.

Paragraph 22

Answering paragraph 19, these interveners say that they are without knowledge as to just when the California Cooperative Canneries began its campaign to release the defendants in this cause from the effect of their agreement. These interveners admit that the interdepartmental committee was organized as stated in said paragraph 19, admit that the statement by the attorney for Southern Wholesale Grocers' Association, one of the interveners, which is copied in said paragraph 19, was made, and admit that wholesale grocers made contentions before said committee somewhat similar to those set out in said paragraph. However, for greater certainty these interveners pray reference to the full record for a correct statement of the arguments before said committee, if this court deems such arguments pertinent. While the former Attorney General testified before a committee of the Senate, it is prayed that the full record of such testimony and not a mere reference thereto be used, if deemed pertinent by this court. All other allegations in said paragraph 19 are denied. Especially do these interveners pray leave to call attention to the fact that this denial applies to the allegation that Southern Wholesale Grocers' Association "alone was called into conference" prior to the entry of the decree herein. The truth being that said Southern Wholesale Grocers' Association, as was open to all other interested parties, participated in the presentation of facts and made suggestions prior to the entry of the decree of February 27,

1920. For a correct statement of what actually occurred with reference to this matter, interveners pray, if this court deems the matter pertinent, reference to their intervention of file in this cause.

While already denied, these interveners pray leave to repeat their denial of the truth of the claim of California Co-operative Canneries that

"The wholesale grocers' system of distribution is one of monstrous profiteering, at the cost of the producer and consumer. They refuse to better their own antiquated methods of distribution, if they can do so, and they also refuse to allow anyone else to operate a better system. At one time they declare that the packers' business is not economic in its operation, and at another time they declare that the packers' methods of distribution are so efficient and economical that the wholesale grocers will be unable to compete in price, and therefore will be driven out of business, and at another time they declare
227 that the packers have passed the point of economic operation on account of their size, and are therefore subject to the so-called 'law of diminishing returns.' Despite these theories, the fact is that the packers are able to market food products at a less cost than can the wholesale grocers or other middlemen or speculators."

The truth is that the defendants in this cause did have before the entry of the decree herein, many advantages over wholesale grocers because of special privileges granted them by interstate carriers, but such advantages did not and will not redound to the benefit of the consumer, but were and would be used by defendants to restrict and suppress competition and to build up a monopoly. Wholesale grocers distribute to more people and more cheaply for the consumer than the defendants, and such grocers create and maintain competition in the broadest sense, and grocers do care for the "welfare and interest of the general public" and do not seek only to "promote their own selfish interest," but seek and do promote such welfare and interest.

Paragraph 23

Answering paragraph 20, these interveners admit that a report was made substantially as therein alleged. However, for greater certainty these interveners pray reference to the original report if the court should deem the same pertinent to any issue in this case.

Paragraph 24

Answering paragraph 21, these interveners admit that a report was made substantially as therein alleged. However, for greater certainty these interveners pray reference to the original report if the court should deem the same pertinent to any issue in this cause. As to the statement in the quoted report that no notice of filing the intervention of these interveners was given, such statement is true, and under equity rule 15 no notice is required.

Paragraph 25

These interveners, answering paragraph 22 of the proposed intervention so far as the same makes any statement of facts, deny the same, and so far as the same alleges conclusions of law, these interveners deny the correctness of such conclusions.

Paragraph 26

Answering paragraph 23, interveners admit that they denied and do now deny the right of this court to vacate or modify the decree hereinbefore made. These interveners also aver that they have the right to be heard herein for the protection of their interests under the original decree, and in order that such original decree may be maintained in its entirety; and these interveners admit that they do and will deny the right, legal or equitable, of California Cooperative Canneries to intervene herein for the purpose of setting aside or materially weakening the original decree herein. These interveners deny that said California Cooperative Canneries have any interest, legal, special, or legitimate in this cause and further deny that said decree is the protection of any monopoly and deny that they have enjoyed or do now enjoy any monopoly and deny that said decree effected any monopoly. These interveners further deny the allegation that California Cooperative Canneries is entitled to intervene, and deny that it has any legitimate interest justifying an intervention herein, and these interveners further deny that there is any litigation now pending before this court and aver that as they are advised, all this court can do in this cause is to enforce the decree heretofore rendered therein.

228

Paragraph 27

Answering paragraph 24, these interveners say that it is true, as alleged therein, that Mr. Justice Stafford suggested the questions there quoted, but these interveners deny that such suggestions constituted any ruling of the court and deny the construction of such suggestions contained in said paragraph 24, and these interveners further allege that whatever questions existed in the court's mind at the time such suggestions were made were discussed in a subsequent printed brief and the court was convinced that intervention of these interveners was proper and entered an order refusing to strike the intervention theretofore filed by these interveners.

Paragraph 28

For further special answer these interveners say that intervener Southern Wholesale Grocers' Association is an association of wholesale grocers with a membership of approximately 2,100 and whose members are located throughout most of the sections of the United States. The other interveners herein and named hereinbefore are

themselves wholesale grocers engaged in business at the places shown in their petition for intervention heretofore filed herein; that all such wholesale grocers, those here intervening and the members of the Southern Wholesale Grocers' Association, and other wholesale grocers are engaged in distributing the food products named in paragraph 4 of the original decree herein, and are in competition among themselves and with others; that heretofore and prior to February 27, 1920, the Southern Wholesale Grocers' Association on its behalf and on behalf of other grocers, filed with the Interstate Commerce Commission a petition seeking to obtain an order against the carriers of the United States requiring them to cease and desist from preferences theretofore granted and then being accorded to the defendants in this cause; that when the decree of February 27, 1920, was entered, the Southern Wholesale Grocers' Association recognized the importance to the public of said decree and the protection
229 that the public would receive therefrom; and such relief being for the benefit of interveners and others of the general public, did not further prosecute the complaint before the Interstate Commerce Commission. The defendants in this case pleaded and relied on said decree of February 27, 1920, as a reason why the Interstate Commerce Commission should not issue the orders prayed for in the complaints thereto, and the Interstate Commerce Commission later in the complaint of the National Wholesale Grocers' Association similar to that filed by the Southern Wholesale Grocers' Association, denied any substantial relief, and in its decision referred to the decree in this cause, relying thereon as a reason for its decision, as these interveners believe and believing so allege; and therefore these interveners allege that because of said decree the defendants in this cause were enabled to defeat a recovery before the Interstate Commerce Commission. Wherefore the defendants, the California Cooperative Canneries and all others are estopped from seeking to set aside the decree rendered herein on February 27, 1920, and are estopped from seeking such a modification of said decree as would destroy in any substantial way its force.

Paragraph 29

Further answering the proposed intervention herein, these interveners say that the proposed intervention is nothing more in substance than a supplemental bill in the nature of a bill of review seeking to set aside the judgment of this court, and that more than two years have elapsed since the entry of said decree and prior to the filing of the motion of the California Cooperative Canneries herein. Wherefore because of said delay and because of the laches of the proposed interveners, and because of equity rule 62 of this court, the proposed interveners have no right or equity to have their motion considered or granted.

Wherefore these interveners pray that the motion made by California Cooperative Canneries herein to be permitted to file an inter-

vention be denied, and that the decree of February 27, 1920 remain as entered and be enforced as authorized by paragraph 18 thereof when and as necessary.

SOUTHERN WHOLESALE GROCERS' ASSOCIATION,
HENRY G. SEARS COMPANY,
JOHN HOFFMAN AND SONS COMPANY,
MASON, EHRMAN & COMPANY,
J. M. RADFORD GROCERY COMPANY,
SOUTHERN DISTRIBUTING COMPANY,
HALL GROCERY COMPANY,
ALBERT MACKIE & Co., Ltd.,
THE HICKS Co.,
W. D. CLEVELAND & SONS,
RAPIDES GROCERY COMPANY,
OLIVER FINNIE GROCERY COMPANY,
By EDGAR WATKINS,
Their Attorney.

230 *Duly sworn to by J. H. McLaurin; jurat omitted in printing.*

In Supreme Court of District of Columbia

Answer of National Wholesale Grocers' Association of the United States to the petition of the California Cooperative Canneries for leave to intervene in the above action

Filed June 13, 1922

The answer of National Wholesale Grocers' Association of the United States, hereinafter called the "association," is filed herein solely under the authority of an order of this court entered on November 5, 1921, providing that said association be allowed intervention in this action, for the limited purpose of being heard "in opposition to any proposed change in the decree herein, which would deprive said association of the protection now secured by said decree."

The association upon information and belief respectfully shows to this court, as follows:

Paragraph I

The association admits that California Cooperative Canneries is a corporation organized under the laws of the State of California, but denies any knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph I of the intervening petition with respect to the details of organization of said California Cooperative Canneries.

Further answering the allegations in Paragraph I, the association alleges—

That the California Cooperative Canneries or its predecessor, Producers' Warehouse Company, was organized pursuant to a plan made with Armour & Company and one J. Ogden Armour for the

organization in California of a cooperative growers association which could be dominated and controlled by Armour & Company and which would enable Armour & Company to obtain a source of supply of California fruits and vegetables and ultimately to acquire a monopolistic control over the production of these products, through use of the vast capital and banking facilities which
231 it has acquired in the development of its meat business; that, pursuant to said plan, said California Cooperative Canneries was organized and financed with money furnished by Armour & Company, as security for which advances Armour & Company received and still holds a first mortgage on certain of the properties of said California Cooperative Canneries and there is now due on said mortgage at least the sum of at least $200,000. In furtherance of said plan of Armour & Company to finance said canneries, said J. Ogden Armour offered to endorse negotiable paper of said canneries for the purpose of raising money thereon.

And the association further alleges that said California Cooperative Canneries is generally known in California as "Armour's Cooperative Canneries," and is entirely dominated and controlled by Armour & Company, both in the general operation of its business and in its efforts to secure the annulment of the decree entered herein upon the solemn written consent of Armour & Company, and that attorneys employed by Armour & Company have furnished counsel and advice to representatives of the California Cooperative Canneries and actively cooperated with said canneries in the endeavor to induce both the Department of Justice and this court to consent to a modification of the decree herein.

Paragraph II

The association denies any knowledge or information sufficient to form a belief as to the existence or correctness of the alleged contract between Producers' Warehouse Company, predecessor of the California Cooperative Canneries, and Armour & Company, set forth in Paragraph II of the intervening petition and as to whether said contract sets forth the full and complete understanding between Armour & Company and the California Cooperative Canneries.

Further answering and admitting, for the purposes of this pleading, that said contract is correctly and fully set forth in the petition, the association alleges that the rights and privileges accruing to the California Cooperative Canneries under said contract are in no way destroyed or affected by the entry of the decree in the suit of U. S. v. Swift & Company et al., other than as contemplated according to the terms of the instrument itself, and further that the said instrument does not constitute a binding agreement between the parties which insured the California Cooperative Canneries of the sale of the whole or any part of its product, for the following reasons:

a. Armour & Company is not obligated thereunder to purchase the product of the Producers Warehouse Company or its successors, but merely has an option on the canned fruits packed by said company.

b. The contract specifically provides in par. 3 that Armour & Company shall not be required to take or accept goods packed by the Producers Warehouse Company "in case the parties are unable to agree upon a price to be paid for such grades."

232 c. The contract provides, par. 1, that Producers Warehouse Company agrees to purchase and Armour & Company to receive "all the California canned fruits required by the business of the second party" (Armour & Company). It appearing that Armour & Company's business is a meat business and does not require any canned fruits whatever and that it merely purchases for resale, under the decisions, the alleged contract is not valid or binding.

d. The association alleges that at the time said alleged contract was made, May 9, 1919, it was anticipated by the parties that said contract might meet with governmental objection, as objection to the activities of the packers doing business in unrelated lines had already been made in the Federal Trade Commission report, dated July, 1918. The said contract therefore contained an express provision that "in case governmental action materially interferes with the performance of this contract by second party, then and in that case it (Armour & Company) shall have the right to cancel and terminate this agreement by giving sixty days' written notice to the first party of its intention so to do and shall not be held liable for any loss resulting therefrom," and that therefore no right of the intervening petitioner has been violated by the cancelling of said alleged contract.

e. The association further alleges that said alleged contract was grossly unfair and inequitable to the Producers Warehouse Company and that by the provisions thereof Armour & Company obtained an unfair advantage as to quantity of product, price, settlement of disputes, right to cancel and in many other respects and by said contract Armour & Company obtained all the benefits usually obtained from a contract for futures without assuming any of the obligations imposed by such a contract.

Paragraph III

The association denies that said California Cooperative Canneries by reason of said contract has any special interest in this litigation or the subject of this suit, or that it is entitled to assert its rights by intervention herein or as a real party in interest.

Paragraph IV

In answer to the allegations of Paragraph IV of the intervening petition, the association alleges that it has no knowledge or information sufficient to form a belief as to the truth of the allegations setting forth the extent of purchases made by Armour & Company from the California Cooperative Canneries and the profit derived by the California Cooperative Canneries from its operations with Armour & Company.

Further answering, the association specifically denies the allegations contained in Paragraph IV that many of the California Cooperative Canneries products reached the consumer at a smaller cost by reason of said contract, and alleges that it was provided in said contract that the price to be paid the canneries for its product
233 should be the same prices as those fixed by the California Packing Corporation and that said products were resold by Armour & Company at the usual market prices and were sold at neither a higher nor lower price than the average price paid by the consumer for other canned fruits and vegetables of the same grade and quality. And the association alleges that in the event that any saving was effected by Armour & Company in the distribution of such products, that such saving was kept by Armour & Company as an additional profit to itself. The association has no knowledge or information with respect to the notice given to California Cooperative Canneries by Armour & Company refusing to proceed with said contract, but the association denies that the decree in this case entitled the California Cooperative Canneries to any standing in this court or to any consideration in any court of law or equity; and the association calls attention to the fact that said alleged contract by the canneries' predecessor and Armour & Company contained the express provision heretofore quoted giving Armour & Company the right to cancel and terminate said contract at any time upon sixty days' notice, without any resulting liability to the canneries' predecessor for any loss resulting therefrom, in case governmental action interfered with the performance of the contract.

The association alleges that under the terms of the decree the defendants were permitted until February 27, 1922, to dispose of the unrelated lines and that Armour & Company has obtained a further extension until August 27, 1922, and is still handling the unrelated lines although the other defendants have complied with the decree in this respect. Up to the present time, therefore, the decree has not prevented Armour & Company from carrying out said alleged contract and Armour & Company's refusal to act thereunder is doubtless due to other reasons such as falling prices or business depression.

The association further alleges that the alleged termination of said contract by Armour & Company has in no way injured or affected the business of the canneries, but alleges that on the contrary during the year 1921, according to testimony given by Vernon Campbell, the president and general manager of said canneries, before the interdepartmental committee referred to in the intervening petition, the sales up to December 1st were not less than those made normally up to that period of the year, and furthermore, that large sales were made during said year to Armour & Co., Ltd., which the association believes is a British company affiliated with and controlled by Armour & Company.

The association further alleges that the year 1921 was a year of wide-spread industrial and business depression and the fact that the

sales of the California Cooperative Canneries during said year were not less than normal is persuasive evidence that its business was in no way damaged by the termination of its alleged contract with Armour & Company.

Further answering, the association alleges that if the petitioner has suffered any loss or damage, it has a full, complete and adequate remedy at law against Armour & Company.

234

Paragraph V

In answer to the allegations in Paragraph V of the petition, the association admits that the defendant Armour & Company has built up an efficient and expeditious system for the distribution of fresh meats, but denies that Armour & Company has any more efficient system for the distribution of nonperishable food products not requiring refrigeration, than is offered by thousands of other distributors, except in so far as it is able to obtain preferential service from the railroads in the transporting of nonperishable products in its refrigerating cars, and in so far as it is sometimes able by reason of its large financial resources and great power to obtain advantages which less powerful and less wealthy competitors were unable to obtain.

The association further alleges that practically the entire business of Armour & Company, in connection with the purchase, distribution, and sale of unrelated food products other than meats, was not undertaken until during the period of the war, and then largely consisted, not in distribution to private consumers, but in the purchase and sale in large quantities for a speculative profit, and that prior to this date, Armour & Company had built up no very efficient, expeditious, or economical system of distributing food products to the consuming public other than its system for the distribution of meats through its expedited refrigerator car transportation service.

Paragraph VI

The association, in answer to the allegations of Paragraph VI of the petition, denies that the decree herein is void for want of jurisdiction and invalid because of any reason set forth in said intervening petition, or for any other reason whatsoever, and denies that the effect of said decree was to restrict and not promote competition in the distribution of food commodities, and denies that said decree was in the interest of the Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association of the United States, or any other particular group or body of persons; and denies that the result of said decree has been to decrease the profit of the producer and increase the cost of the consumer; and the association denies that said decree is improvident or unwise; and denies that it is interlocutory and not final.

Further answering the allegations of Paragraph VI of the intervening petition, the association alleges that there are in this country

approximately 5,000 wholesale grocers, many thousands of canners and food manufacturers, with and without selling organizations, mail-order houses, chain stores, department stores, and approximately 400,000 retail grocers. These whole grocers, canners, and manufacturers, mail-order houses, chain stores, department stores, and retail grocers are in active competition with each other and said competition is real and substantial.

On the other hand, the main defendants in this case are only five in number, who by reason of their rapid growth, great power, and monopolistic tendencies were seeking to gain complete control
235 over the source of supply and manufacture of the food products of the country and to extend their existing domination over the sale and distribution of meats and meat food products to unrelated food lines.

The association further alleges that between said five defendants there was no real or substantial competition but that they cooperated among themselves to divide the country and to extend their mutual control.

The association alleges that by the entry of the decree herein the sinister menace of the monopoly of these five defendants over the Nation's food has been removed and that competition has again been made real and substantial.

The association further alleges that the tendency of the five defendants has not been to give to either producer or consumer the benefits of such economies as they may have effected in the distribution of food products, but to obtain a greater profit for themselves, and the association asserts that at the time the decree was entered herein the prices paid by consumers for food products had reached an unparalleled height and the association urges comparison with the prices paid by consumers for the unrelated lines at the time when the decree was entered herein and to-day, certain of which facts were brought out in the testimony before the interdepartmental committee.

The association admits that due to widespread business and industrial depression producers have not received during the past year as high prices for food products as they were entitled to receive, but the association alleges that comparison between the general financial condition to-day of persons engaged in the growing and production of unrelated food products and persons engaged in the production of livestock who have had an outlet for their product through the defendants herein, will show that the latter have suffered more than the former as partially shown in the testimony before the interdepartmental committee.

The association alleges that said decree is final and that the provision that jurisdiction is retained by the court over the decree is limited to the purpose of taking action to carry out the decree, as shown by the last paragraph thereof. The association further alleges that said provision confers no jurisdiction on the court to modify the decree for any other purpose, much less to set it aside.

The association alleges that the decree herein was and is a final settlement of the attempt of the defendants to dominate the country's food supply through the extension of the monopoly and control, which they now enjoy and possess over meats and meat food products, to all other food products essential to the daily existence of the American people, through control of sources of supply and markets and by means of large financial resources, and that said decree has been of inestimable advantage and benefit to the people of the United States.

Paragraph VII

In answer to the allegations of Paragraph VII of the intervening petition, the association denies the allegations contained in
236 said paragraph that the decree herein was passed without any notice to the California Cooperative Canneries and without any opportunity whatever to be heard.

The association alleges that at least two months prior to the entry of said decree on February 27, 1920, formal and official announcement was made by the Attorney General of the United States that an agreement had been made or was about to be made by the Attorney General with the defendants for the entry of said decree in substantially the same form as contained in said decree, and said announcement was widely published in the press of the country and met with widespread public favor, and the fact that said decree was about to be entered into was a well-known fact.

The association further alleges that the California Cooperative Canneries was not entitled in law to any notice of the entry of said decree, and upon information and belief further alleges that said California Cooperative Canneries was well acquainted with the fact that Armour & Company had or was about to enter into the proposed stipulation, which stipulation preceded the decree by about two months, and made no objection whatsoever to the entry of said decree.

The association repeats the allegations herein contained that said California Cooperative Canneries was at the time of the signing of the stipulation and the entry of the decree herein and still is entirely dominated and controlled by Armour & Company and therefore was not interested in opposing such decree.

The association admits that since May, 1920, the California Cooperative Canneries has been actively engaged in secret and furtive attempts to undermine said decree and to have it vacated or modified, and the association alleges upon information and belief that said California Cooperative Canneries is still entirely under the control and domination of Armour & Company, and that such actions of said California Cooperative Canneries in attacking and seeking to destroy said decree are made with the full knowledge and acquiescence and solicitation of Armour & Company.

Paragraph VIII

The association admits that on or about January 7, 1920, the Attorney General of the United States appeared before the Senate Committee on Agriculture and Forestry and made a certain statement to said committee as set forth in Paragraph VIII of the intervening petition, but denies that there is set forth in said intervening petition a correct statement of either the entire memorandum filed by the Attorney General with the Senate committee or a complete statement of the testimony filed before said committee.

Further answering said paragraph, the association refers to the complete record of the hearing before the Committee on Agriculture and Forestry of the United States Senate, Sixty-sixth Congress, second session, on S. 2199 and S. 2202, part 4, for a complete record of such hearings, and the association calls particular attention
237 to the following statement which was filed by the Attorney General in regard to the provisions of the decree prohibiting the defendants from dealing in the unrelated lines:

"Fifth alleged evil—Substitutes for meat

"The investigation demonstrated that even with a practical monopoly of the supplies of meat in the country the price could not be controlled by the defendants without the control of substitute foods.

"That if meat prices advanced out of proportion to those of other substitute goods, the consuming public manifested "a tendency to turn to such substitutes. To prevent this it is charged that the defendants sought by controlling the Nation's supply of fish, vegetables, fresh or canned fruits, cereals, milk, poultry, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose, the defendants availed themselves of the advantages at hand in the auto trucks, route cars, branch houses, and storage warehouses owned or controlled by them.

"These facilities, intended primarily for the sale of meats, were employed, with comparatively no increase of overhead in the distribution of the substitute foods and unrelated commodities. The defendants were thereby enabled to reach remote spots. These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control was extensively and rapidly increasing. New fields were gradually being invaded. Yearly great numbers of competitors abandoned the contest and quit business or sold out to the parent corporations or their subsidiaries. Unless prevented by this decree, the defendants would have, within the compass of a few years, controlled the quantity and price of practically every article of food found on the American table.

"In the 15 years from 1904 to 1919 Swift & Co., Armour & Co., Wilson & Co. (Inc.), and the Cudahy Packing Co., according to

their financial reports, grew from a net worth of approximately $92,000,000 to a net worth of approximately $479,000,00, but in this same period they paid in cash dividends $105,000,000. Only $89,000,000 of their increased worth was represented in capital. Though always asserting a very low rate of profit on sales, the five parent companies have grown so rapidly that their combined net profit for 1919 has equaled nearly the amount of their total sales in 1904. The sales themselves in 15 years have increased until for the fiscal year 1918 they reached the vast sum of $3,200,000,000. This was realized from meats, substitute foods, and unrelated lines, as hereinabove set forth. In stating these figures, account has been taken only of profits and sales to the parent companies and subsidiaries included by them upon their books. No account has been taken of the many corporations which are owned or controlled by the same family of financial interests as own or control the parent companies.

"In addition to these profits, there have been other vast
238 profits, difficult of ascertainment, realized by the individuals by virtue of either their personal control of packing houses and slaughtering companies or their interests in stockyards, terminal railroads, rendering companies, cattle loan institutions and banks, and other corporations, all of which corporations have their inception and depend for their prosperity upon advantages or privileges growing out of the interlocking control of the stockyards and stockyard appurtenances.

"The parent companies, or the individual defendants, and their families maintain and control 574 corporations or concerns, including 131 trade names. They have a significant minority-stock interest in 95 others and an interest of unknown extent in an additional 93. Thus the total number of concerns in which they have control or interest is some 762. Practically all of these companies, however, come under the jurisdiction of the court through the naming of the above-mentioned defendants.

"In the years that have passed, the parent companies have acquired or organized many other concerns and have maintained them so long as they were useful for their purposes. When no longer useful, these concerns so acquired or organized have been dissolved and their businesses have been merged into that of the parent companies or into that of other subsidiaries. Such dissolved corporations and concerns are omitted in the above compilation, except in such instance as the name has been continued as a trade name. The total of 762 above stated therefore falls far short of representing the number of concerns that corporate and individual defendants have acquired or have organized in furtherance of their general scheme and plan of action already explained. It would be an enormous undertaking to determine the degree of control exercised by the defendants in all of these various interests. Enough has been ascertained to indicate that the growth has been rapid and that if per-

mitted to continue unchecked in a matter of a few years the control would be complete.

"In 1916 the business of Armour & Co. canned fish, vegetables, and sundries, canned and dried fruits, fruit preserves, and grape juice amounted to $6,396,036.73. In 1918, two years later, the same company's volume of business in these same items was $39,820,000 over sixfold increase. While part of this increase of business may be attributed to the increase of population and the consequent increase of consumption, the greater part thereof was acquired at the expense of competitors.

"Of the corporations which have been acquired by the parent companies in recent years, the large number are concerns manufacturing or selling these substitute foods or unrelated commodities. This fact, together with the increased activities of the parent organizations themselves in these lines, indicated a well-defined purpose of their part to secure control of the market for meat substitute foods.

In addition to the companies in which control has been acquired by outright purchase, the parent companies have in a large number of instances contracted for the exclusive output of many other
239 companies engaged in the production of the substitute foods and the unrelated commodities. The output of these plants are marketed by the parent companies or by their subsidiaries through the distribution facilities of the parent companies. In this fashion the parent companies control the output of these concerns and the market price of their products as completely as though they themselves owned the producing companies."

The association further alleges that the statement contained in Paragraph VIII of the intervening petition purporting to report the views of the Attorney General fails to give a complete and accurate representation of the views of the Attorney General, in that it fails to show the specific and definite statements made by the Attorney General to the effect that the defendants had violated the laws of the United States, and the association calls attention, merely as a typical example of the nature of statements which have been eliminated, to the following question and answer which are entirely omitted from the statements set forth in Paragraph VIII:

"Senator Norris. In your examination of the evidence that was submitted to you by the Federal Trade Commission and other evidence which you examined, did you reach the conclusion, as a lawyer, that the packers or any of them had violated the criminal statute or were criminally liable?

"Attorney General. I think they had violated the Sherman anti-trust law; that is both a criminal and a civil statute, Senator." (Hearings on S. 2199 and S. 2202, part 4, p. 47.)

The association also refers to the statements made by the Attorney General of the United States with regard to the consent decree at certain hearings before the Committee on Agriculture of the House of Representatives of the Sixty-sixth Congress, second session, on

meat-packer legislation, part 31, in which hearings it was also made clear that the Department of Justice was of the opinion that the defendants had violated the antitrust law.

Further answering said paragraph, the association alleges that by the statements made in Paragraph VIII of the intervening petition it is sought to convey the impression that the Department of Justice was not convinced and did not have evidence to show that the defendants were guilty of violations of Federal statutes, whereas an examination of said hearings will disclose that the Attorney General was of the opinion that the evidence in his possession showed violations of the Sherman antitrust law and that the only question which had not been determined was whether the proceedings should be criminal or in equity.

And the association further alleges that said defendants, well knowing the acts of which they had been guilty and fearing prosecution for said acts, either criminally or in equity, of their own volition approached the Attorney General and solicited the decree herein, believing this would result in an abandonment of criminal proceedings against them, and the statements of the Attorney General of the United States contained in Paragraph VIII of the
240 intervening petition show that the entry of the decree herein did result in abandonment of further criminal prosecution.

The association denies that the testimony given by the Attorney General of the United States to the Senate Committee on Agriculture and Forestry was copied and sent to the wholesale grocers of the United States, and also alleges that such allegation has no relevancy in any event.

Paragraph IX

The association admits that the decree herein was entered on February 27, 1920, and denies any knowledge or information sufficient to form a belief as to whether the complaint and answers of the defendants were filed in this court on the same day, but if such were the case the association alleges that it is the usual and ordinary practice where decrees are agreed upon and are to be entered on consent to have the decree entered at substantially the same time when the complaint and answer are filed.

With regard to the allegations of the complaint and the answers herein, your association refers to same with the same force and effect as though they were set forth in full in this answer.

Paragraph X

In answer to the allegations of Paragraph X of the intervening petition, the association denies that any of the reservations in the stipulation and decree had the effect of depriving this court of jurisdiction or power to enter this decree in any respect, and further

denies the allegations in said Paragraph X that the effect of said decree was to create a monopoly and denies that said decree is so general in its terms to be a nullity; and denies that the decree is void because it enjoins the defendants from conducting lawful businesses and because it prevents them from engaging in trade authorized by the Webb Export Act; and the association further denies that the decree was an economic mistake, unfounded in law or in fact.

The association further alleges that the stipulation or saving clause, referred to in paragraph ninth of said petition, providing that the defendants maintained the truth of their answers and asserted their innocence of any violation of law, and that the consent to the terms of the decree should not be considered an admission or an adjudication that they had in fact violated any law of the United States, did not in any sense detract from the binding effect of the decree and of its specific provisions and prohibitions thereof, which constituted an agreement between the defendant packers and the Government of the United States with respect to the matters covered by the terms of said decree.

In further answer to said paragraph, the association alleges, upon information and belief, that the reservations contained in said decree were inserted for the purpose of preventing said decree from being used in evidence against the defendants in treble-damage suits, which the defendants anticipated would be brought against them by
241 some of the many persons who had been injured by the unlawful acts of the defendants, and the association calls attention to the fact that it is contrary to the policy of Congress that consent decrees in antitrust suits should be accepted as prima facie evidence or as final adjudications in suits for damages as section 5 of the act of October 15, 1915, known as the Clayton Act, specifically provides.

The association again alleges that dealings in the unrelated commodities are not confined to wholesale grocers, of whom there are approximately 5,000 in the United States, but said commodities are and to a very large extent dealt in by producers, manufacturers, chain stores, retail grocers, mail order houses, department stores, and many others, and that the total number of distinct concerns dealing in unrelated commodities exceeds 500,000. The statement contained in Paragraph X that the elimination of five concerns out of so large a number resulted in the creation of a monopoly is absurd upon the face of it.

The association further alleges that the injunctions contained in said decree with regard to the unrelated lines are in no way general, but are specific, setting forth the particular lines which the corporate defendants are prohibited from handling and specifically defining the interest which the individual defendants may have in the concerns dealing in such products. And the association alleges that such specific prohibitions and provisions are necessary to check the unlawful act of defendants as an injunction in general terms issued in

1913 and affirmed in 1905 by the United States Supreme Court (United States v. Swift, 196 U. S. 375), had been ineffective for this purpose.

The association alleges that the allegations contained in the complaint herein setting forth the persistent violations of law by the defendant packers and the evidence obtained by the Department of Justice, the Federal Trade Commission, and other agencies as a result of investigations and prosecutions over a period of years showing the flagrant disregard by the defendants of the restrictions imposed upon them by law, fully justify the provisions contained in said decree.

The association alleges that the provisions of said decree do not in any way conflict with the Webb Export Act of April 10, 1918, and alleges that the defendants were at no time engaged in business pursuant to said statute, and that none of the defendants had ever registered thereunder; and, furthermore, sets forth that said statute specifically provides that no association formed pursuant to its provisions shall either in the United States or elsewhere "enter into any agreement, understanding, or conspiracy or do any act which artificially or intentionally enhances or depresses prices within the United States or commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein."

And the association alleges that the defendants herein have for a long period of time entered into agreements, understandings, or conspiracies in violation of the statutes, and that their acts had substantially lessened competition within the United States and restrained trade, all of which facts were known to the Attorney General
242 and to the Federal Trade Commission and to committees of Congress prior to the filing of the complaint in this proceeding and the entry of the decree herein on February 27, 1920, and many of which are specifically referred to in report of Federal Trade Commission to the President of the United States dated July 3, 1918.

Paragraph XI

In answer to the allegations of Paragraph XI of the intervening petition, the association denies that it has any knowledge or information sufficient to form a belief as to the quantity of goods purchased by Armour & Company from the California Cooperative Canneries under the contract heretofore referred to, and the association denies that said contract was of great value, or that it gave the California Cooperative Canneries a ready market for its output; and the association refers to the allegations above set forth herein with regard to the terms of said contract.

The association in further answer alleges that said contract, because of its indefiniteness and because it imposed no obligation whatsoever upon the purchaser to purchase if price was not agreed upon, was not of the character which would justify banks in making loans thereon.

The association further alleges that any and all products delivered to Armour & Company pursuant to said alleged contract were sold to Armour & Company and were not given to Armour & Company for distribution as the agent of the California Cooperative Canneries.

Paragraph XII

In answer to the allegations in Paragraph XII of the intervening petition, the association denies any knowledge or information sufficient to form a belief as to the character of any notice given by Armour & Company to the intervening petitioner, and further denies that the intervening petitioner has suffered any legal damages resulting from the entry of the decree or any other damages of any character by reason thereof, but alleges that if the petitioner really believes it has suffered any damages through violation of its rights, it has an adequate remedy at law against Armour & Company.

The association denies that the decree destroyed markets for the intervening petitioner built up during a long period of years and directs attention to the fact that the alleged contract between the petitioner and Armour & Company was entered into less than a year prior to the entry of the decree herein and after charges had been made by the Federal Trade Commission that the extension of the packers' monopoly into unrelated lines was a menace to the public welfare.

Further answering said paragraph, the association admits that the intervening petitioner has been seeking ever since May, 1920, in various ways to secure a nullification of said consent decree, with the support or at least the approval of Armour & Company,
243 and in particular has urged the Department of Justice to move the court to vacate said decree. The association admits that the Department of Justice was inclined to be fair and reasonable, and for that reason refused to move to vacate said decree until an opportunity had been given to all persons interested to appear and be heard, and for that purpose hearings were held before the Honorable Herman J. Galloway, Honorable Bayard T. Hainer, and Mr. Frank C. Hall, designated by the Department of Justice to hear all parties who desired to be heard either in favor of or against modification of said decree, and after such hearings said committee reported to the Attorney General that the Attorney General should not grant such request of the California Cooperative Canneries to move for the modification or setting aside of the decree.

The association further admits that at such hearings the Southern Wholesale Grocers' Association and the National Wholesale Grocers' Association of the United States appeared and were granted a hearing, and alleges that the California Cooperative Canneries appeared as the leading exponent of modification.

The association denies that the wholesale grocers' associations referred to exercise plenary authority over their members and seri-

ously affect the producers, retailers, and consumers of food commodities, and alleges that any power and influence that such associations may have arise only from the merits of the cause which said associations have supported.

The association denies that the wholesale grocers' associations have at any time attacked the intervening petitioner through the public press, or otherwise, except in so far as said associations have given publicity to the true facts in regard to the California Cooperative Canneries, its organization in connection with Armour & Company, its efforts to secure a setting aside of the consent decree, and the reasons for the entry of said consent decree and the objections to its being vacated or modified in any way.

The association denies any knowledge or information sufficient to form a belief with regard to the true facts in connection with the complaint filed with the Federal Trade Commission charging that the intervening petitioner was affiliated with Armour & Company, or as to the findings of the commission in regard to same. But your association alleges it to be a fact that said California Cooperative Canneries is closely connected with and is dominated and controlled by Armour & Company.

The association denies the allegations of said Paragraph XII in so far as it is therein alleged that the association does not represent the public interest and that the association has fought honest and fair competition, and also any implications contained in said paragraph to the effect that the association has at any time been made a party to any proceedings by the Federal Trade Commission or at any time adjudged guilty of violations of the Sherman Act or of any other statute, or that any proceedings have at any time been brought against the association by the Federal Trade Commission or by any other governmental body.

The association in further answer alleges that it has at all
244 times endeavored to further and support the interest of the public generally as well as the interest of its members, and that it has at no time been guilty of any violation of statute.

The association further alleges that the defendants, on the contrary, have been guilty of repeated violations of Federal and State statutes; that they have been the subject of repeated investigations by Congress, by the Department of Justice, and by the Federal Trade Commission, and that said investigations have revealed many violations of law by said defendants; and that said defendants have been the subject of civil and criminal proceedings, in which it has been found and determined that they had been guilty of such violations of law.

Paragraph XIII

The association denies each and every allegation contained in Paragraph XIII of the intervening petition in so far as it is therein alleged that the association has at any time conducted a campaign

of coercion and intimidation in order to secure, through any improper means, canners and others to oppose a modification of the consent decree, and in particular denies the allegations contained in said Paragraph XIII in so far as it is therein alleged, either directly or by insinuation, that the association in any improper way influenced the action of the Western Canners Association in opposing modification of the consent decree.

Further answering said paragraph, the association alleges that, on the contrary, the intervening petitioner, ever since May, 1920, has been seeking in various ways to secure a modification or setting aside of the said consent decree and has conducted a widespread propaganda for this purpose. The association further alleges that said campaign of the intervening petitioner has been conducted with a concealment and misrepresentation of the facts in relation to the decree and of the true situation of the California Cooperative Canneries; that the intervening petitioner has at all times attempted to conceal its connection and relationship with Armour & Company and has represented itself as an independent organization, although it has at all times been controlled and dominated by Armour & Company, and the association believes its actions in seeking to secure a modification of said decree are being directed, furthered, and assisted by Armour & Company.

The association alleges that prior to September 1, 1921, the intervening petitioner had met with considerable success in creating sentiment in favor of a modification of the consent decree, due to the fact that it had been able to conceal its true character, and the efforts which it was making along these lines, whereas the large public interest which is opposed to the modification of the consent decree, being entirely unaware of the steps being taken by the intervening petitioner, had made no effort to counteract its efforts and to present the true facts to the public. Because of this situation, the vice president and general manager of the intervening petitioner was able to secure the passing of a resolution in favor of modification of
245 said decree at an irregularly called and held meeting of a few members of the Western Canners Association, which meeting was attended by the said vice president and general manager, who consulted privately with the committee which prepared such resolution. Thereafter, when the general membership of said association learned of the passage of such resolution and also learned of the true facts in connection with the matter, the membership at its annual convention held in Chicago on October 11th and 12th and attended by more members than any other meeting ever held by the Western Canners Association, by unanimous vote repudiated said previous resolution and adopted a resolution opposing any modification of the decree.

The association alleges that the only support which the intervening petitioner has been able to obtain for a modification of the consent decree has been through misrepresentations and concealment of

facts, and that in almost every case when the true facts have become known, the modification or setting aside of the decree has met with immediate opposition.

The association denies that the bill of complaint in this suit does not charge the defendants with attempting to create a monopoly, and denies the allegation in Paragraph XIII in so far as it is therein alleged that the defendants have not created a monopoly in the handling of food products and have not been guilty of violations of law; and the association denies the allegations contained in said paragraph seeking to minimize the extent of the dealings of Armour & Company in rice, which the association alleges Armour & Company handled in such large quantities that the president thereof boasted that he was the largest rice merchant in the world; and the association alleges that the price of rice was greatly increased by reason of the operations of Armour & Company therein.

In further answer to said paragraph, the association refers to the complaint in this action and to the terms thereof charging the defendants with contracts in restraint of trade, monopolization and attempts to monopolize, unfair competition and other violations of statute, and in particular repeats the allegations of the complaint with regard to the attempted control of substitute foods reading as follows:

"Control of substitute foods

"Having eliminated competition in the meat products, the defendants next took cognizance of the competition which might be expected from what we here refer to as substitute foods. Their experience had taught them that if meat prices advanced out of proportion to that of other substitute foods the consuming public manifested a tendency to turn to such substitutes. To prevent this, the defendants set about controlling the Nation's supplies of fish, vegetables, either fresh or canned, fruits, cereals, milk, poultry, butter, eggs, cheese, and other substitute foods ordinarily handled by wholesale grocers or produce dealers. To accomplish this purpose, the defendants availed themselves of the advantages afforded by the refrigerator cars, route cars, auto trucks, branch houses, and storage warehouses owned
246 or controlled by them. These facilities intended primarily for the sale of meats, were employed with comparatively no increase of overhead in the distribution of substitute foods and unrelated commodities. The defendants were enabled thereby to reach remote spots. This advantage was also employed temporarily to fix prices so low as to gradually eliminate competition."

"These attempts to monopolize have resulted in complete control in many of the substitute food lines. They have made substantial headway in others. The control is extensively and rapidly increasing. New fields are gradually being invaded, and unless prevented by a decree of this court the defendants will within the compass of a few years control the quantity and price of each article of food found on the American table."

Paragraph XIV

In answer to the allegations of Paragraph XIV of the intervening petition, the association denies the allegations contained therein with regard to the business of the defendants in unrelated commodities, and alleges that in many of the unrelated commodities the extent of the business of the defendants far exceeded the percentages and figures set forth in said paragraph, and that the defendants were making rapid progress toward a monopolization of many lines of substitute foods.

Further answering said paragraph, the association alleges that in considering the extent of the business of the defendants in the unrelated lines there must be considered their complete monopolization and control of meat and meat food products, dairy products, and other lines and that their business must be considered as a whole in determining their true relation to the unrelated lines. The association refers in particular to the extensive reports made by the Federal Trade Commission, of its investigation of the meat-packing industry, and would direct particular attention to the following facts which were found with regard to the defendants as set forth in the summary report of the commission:

"It appears that five great packing concerns of the country—Swift, Armour, Morris, Cudahy and Wilson—have attained such a dominant position that they control at will the market in which they buy their supplies, the market in which they sell their products, and hold the fortunes of their competitors in their hands." (Summary report, page 3.)

"We have found that it is not so much the means of production and preparation, nor the sheer momentum of great wealth, but the advantage which is obtained through a monopolistic control of the market places and means of transportation and distribution." (Summary report, page 4.)

"The producer of livestock is at the mercy of these five companies because they control the market and the marketing facilities and, to some extent, the rolling stock which transports the product to the market." (Summary report, page 4.)

"The competitors of these five concerns are at their mercy because of the control of the market places, storage facilities, and the refrigerator cars for distribution." (Summary report, page 4.)

247 "The consumer of meat products is at the mercy of these five because both producer and competitor are helpless to bring relief." (Summary report, page 4.)

"Five corporations, Armour & Co., Swift & Co., Morris & Co., Wilson & Co., Inc., and the Cudahy Packing Co., hereafter referred to as 'Big Five' or 'the packers,' together with their subsidiaries and affiliated companies, not only have a monopolistic control over the American meat industry, but have secured control, similar in purpose if not yet in extent, over the principal substitutes for meat,

such as eggs, cheese, and vegetable oil products, and are rapidly extending their power to cover fish and nearly every kind of foodstuff." (Summary report, page 9.)

"The monopolistic position of the Big Five is based not only upon the large proportion of the meat business which they handle, ranging from 61 to 86 per cent, in the principal lines, but primarily upon their ownership, separately or jointly, of stockyards, car lines, cold-storage plants, branch houses, and the other essential facilities for the distribution of perishable foods." (Summary report, page 9.)

"The control of these five great corporations, furthermore, rests in the hands of a small group of individuals, namely, J. Ogden Armour, the Swift Brothers, the Morris Brothers, Thomas E. Wilson (acting under the veto of a small group of bankers), and the Cudahys." (Summary report, page 9.)

"The combination among the Big Five is not a casual agreement brought about by indirect and obscure methods, but a definite and positive conspiracy for the purpose of regulating purchases of livestock and controlling the price of meat, the terms of the conspiracy being found in certain documents which are in our possession." (Summary report, page 10.)

"The power of the Big Five in the United States has been and is being unfairly and illegally used to—

"Manipulate livestock markets;

"Restrict interstate and international supplies of foods;

"Control the prices of dressed meats and other foods;

"Defraud both the producers of food and consumers;

"Crush effective competition;

"Secure special privileges from railroads, stockyard companies, and municipalities; and

"Profiteer." (Summary report, page 11.)

"The most satisfactory single index of the proportion of the meat industry controlled by the Big Five is the fact that they kill, in round figures, 70 per cent of the livestock slaughtered by all packers and butchers engaged in interstate commerce. In 1916 the Big Five's percentage of the interstate slaughter, including subsidiary and affiliated companies, was as follows:

Cattle	82.2
Calves	76.6
Hogs	61.2
Sheep and lambs	86.4

(Summary report, page 11.)

248 "The business of the packing companies originally was limited to the slaughter of livestock and the distribution of meat and animal products and by-products. Now, however, they are rapidly extending their control over all possible substitutes for meat—fish, poultry, eggs, milk, butter, cheese, and all kinds of vegetable oil products, and have secured strategic points of collection, preparation, and distribution of these products." (Summary report, page 13.)

"These strategic positions, which serve not only to protect the controls which the big packers have already acquired, but to insure their easy conquest of new fields, are—

"Stockyards, with their collateral institutions, such as terminal roads, cattle-loan banks, and market papers.

"Private refrigerator car lines for the transportation of all kinds of perishable foods.

"Cold-storage plants for the preservation of perishable foods.

"Branch-house system of wholesale distribution.

"Banks and real estate." (Summary report, page 15.)

"The purpose of this combination, which for more than a generation has defied the law and escaped adequate punishments, are sufficiently clear from the history of the conspiracy and from the numerous documents already presented, namely:

"To monopolize and divide among the several interests the distribution of the food supply, not only of the United States but of all countries which produce a food surplus, and as a result of this monopolistic position—

"To extort excessive profits from the people, not only of the United States but of a large part of the world." (Summary report, page 40.)

The detailed evidence supporting said consideration of facts will be found in the report of the Federal Trade Commission, to which reference is made.

The association alleges that the amount of business done by wholesale grocers who are in active competition with each other and with thousands of other merchants, is entirely irrelevant in this proceeding as contrasted with the business done by the five defendants who have been operating in close cooperation and harmony with each other for many years in alleged violation of law.

The association asserts that no proceedings are here pending against the wholesale grocers and that this is not a controversy between the wholesale grocers and the defendant packers, but is a controversy between the United States of America and the defendant packers; and the association alleges that the allegations of Paragraph XIV and other allegations of the intervening petition are entirely irrelevant and without value in this proceeding.

With respect to the allegations of Paragraph XIV in regard to the proceedings brought before the Interstate Commerce Commission by the National Wholesale Grocers' Association charging that the packers were granted unfair advantages in the transportation of products by the carriers, the association refers to the decision of the Interstate Commerce Commission in that case and alleges that it was found and held in that case that the packers did receive certain
249 unfair advantages over the complainants, and the association alleges that in so far as it was determined in that proceeding that there was not an unfair advantage with regard to the expedited transportation service claimed to have been afforded the meat packers, there is pending an application for a reconsideration of the case, which application has not yet been determined.

Paragraph XV

In answer to the allegations of Paragraph XV of the intervening petition, the association asserts that the allegations therein contained are entirely immaterial to this proceeding, but the association denies the allegations therein contained with regard to the cost of distributing food products and in so far as it is alleged that the wholesale grocers charge excessive sums for the distribution of food products, and alleges that food products are distributed by wholesale grocers reasonably and economically and that the profit received by the wholesale grocers for their services is an extremely reasonable and moderate profit.

In so far as it is claimed food products are distributed more economically and reasonably by the defendants, the association denies such allegations and invites comparison between the retail and wholesale prices of meat in this country between 1913 and 1921 and also the prices paid producers and growers for these different kinds of food products, and the association alleges the distribution of meat and meat food products is entirely monopolized by the defendants.

The association in further answer alleges that it is far more to the public interest to have its food products distributed through wholesale grocers, chain stores, retail grocers, department stores, mail-order houses, totalling at least 500,000 different concerns, all in honest competition with each other, than to have the Nation's food distributed by five concerns working under a common understanding and in close cooperation, even though food products were distributed more efficiently by said five concerns, and the association alleges that it is the policy of the American Government to foster a competitive system of industry open to all, instead of placing industries in the hands of monopolies.

The association specifically denies, however, that the distribution of the unrelated food products by defendants would result in any saving to the consumer. In answer to the allegation of this paragraph that there are three hundred concerns in this country engaged in the business of meat packing, the association points out that this decree affects only five such concerns.

Paragraph XVI

In answer to the allegations of Paragraph XVI of the intervening petition, the association denies any knowledge or information sufficient to form a belief as to whether or not two of the defendants, Armour & Company and Wilson & Company, are willing to distribute food products on a commission basis if permitted so to do, inasmuch as the association has not been so informed by said Armour & Company and Wilson & Company; but the association alleges that the intervening petitioner, being entirely controlled and dominated by Armour & Company, has doubtless been informed by Armour & Company as to its wishes in this matter, and fur-

ther alleges that this proceeding has been brought by the intervening petitioner with the consent, acquiescence, and at the direct instance of Armour & Company. With respect to the defendants other than Armour & Company the association alleges that Swift & Company, Morris & Company, and Cudahy Packing Company are unwilling to consent to a modification of said decree as sought by the petitioner and are opposed to same.

As a further answer, the association, upon information and belief, denies that the handling of unrelated food products by the defendant meat packers would meet with the approval of the Department of Agriculture and would enable producers, canners, and food manufacturers to sell their product at the lowest possible cost, believing that the Department of Agriculture is opposed to the extension of defendant's monopoly and on the contrary favors a competitive system of industry.

And the association further alleges that such a system of doing business as is proposed by the petitioner would make it impossible for small growers, producers, and manufacturers to carry on their business which is now financed largely by means of future contracts entered into by the present concerns engaged in the distribution of food products. Moreover, such a system of doing business on a commission basis is solely in the interest of defendant packers, as it would enable them to carry on their business at an assured profit, without risk of loss, and the association alleges that the commission which was paid by the California Cooperative Canneries under its contract with Armour & Company gave the latter a larger profit from its handling of the products of the California Cooperative Canneries than the profits usually received by wholesale grocers for services in acting as a distributor of food products.

The association alleges that it is to the interest of Armour & Company to make it impossible for small growers, producers, and canners to finance themselves as their failure would enable Armour & Company to acquire at a low price sources of production and manufacture.

The association further denies that under such a system as proposed by the intervening petitioner, consumers would receive products at any less price than to-day, and denies that the distribution through the meat packers would reduce the retail price of food products, and the association refers to the prices charged by the meat packers for food products in comparison to prices charged by wholesale grocers as substantiating these facts.

The association further alleges that the commission proposed to be charged by the defendants, i. e., 5%, exceeds the profit now made by the distributors of the unrelated food products and the giving of such an increased profit to the defendants would necessarily result in an increased price to the consumer.

The association admits, as alleged in Paragraph XVI, that the ordinary producers, canners, and food manufacturers and
251 distributors are not concerns of huge magnitude as alleged in Paragraph XVI, and admits that the defendant packers

are concerns of tremendous magnitude as therein alleged; but the association alleges that it is contrary to public policy and contrary to law to concentrate the handling of the Nation's food products in a few large monopolistic concerns to the complete destruction of competitive business and industry in the United States.

Paragraph XVII

In answer to the allegations of Paragraph XVII, the association denies the allegations therein contained that the decree was an economic mistake and that the Webb Export Act in any way sanctions the violations of law in which the defendants have been engaged.

Further answering said paragraph, the association alleges that the defendant meat packers have organized many subsidiary concerns under the laws of foreign countries and that said decree does not in any way prevent said subsidiaries from engaging in the export business of food products, and as an instance of this, the association alleges that the California Cooperative Canneries during the year 1921 sold large quantities of its product to Armour & Co., Ltd., a British corporation.

The association further alleges that said decree is not inconsistent with the provisions of the Webb Export Act of April 10, 1918, and refers to the previous allegation contained in Paragraph X of this answer showing that under said act a combination in restraint of trade and monopolies such as that of the defendant packers is unlawful.

The association further alleges that if said defendant packers were allowed to engage in the export business of unrelated commodities while being prohibited from selling same in the United States such action would very likely result in a large increase to the consumers of the United States of the cost of food products due to the large quantities which would be exported by the defendant packers.

Paragraph XVIII

The association denies each and every allegation contained in Paragraph XVIII of the intervening petition which alleges that the meat packers are under Federal supervision and control by virtue of the packers and stockyards act of August 15, 1921, except in so far as they are engaged in the distribution and sale of meat-food products, and alleges that in the event of modification of this decree the said packers would be subject to no supervision and control with regard to their dealings in unrelated lines; and the association alleges that said packers and stockyards act does not in any way regulate and supervise the dealings of the meat packers in such unrelated products and that it would be impossible to devise any practical and efficient system of supervision.

The association again admits the allegations contained in Paragraph XVIII of the intervening petition with regard to the

252 huge size of the defendant packers and again alleges that it is contrary to Government policy to foster and further such growth. The association desires to emphasize the fact that the intervening petitioner favors and urges the creation of a huge monopoly for the purpose of handling the Nation's foods, all of which would be most detrimental to the interests of the public.

With regard to the allegations of Paragraph XVIII setting forth the views of a Member of Congress, the association alleges that it has no knowledge or information sufficient to form a belief as to the correctness of said views, or who expressed same, but alleges that the views therein expressed are bad law and unsound economics; and the association further alleges, upon information and belief, that said letter was obtained at the instance of the intervening petitioner for the purpose of spreading its propaganda.

Paragraph XIX

In answer to the allegations of Paragraph XIX of the intervening petition, the association admits that the petitioner has repeatedly solicited the Attorney General of the United States to move for a modification of the decree herein, but denies that the intervening petitioner made any application for a public hearing or that the interdepartmental committee was appointed by the Attorney General at the request of the petitioner.

The association alleges that the intervening petitioner was most anxious to avoid any public hearing on this matter at which the true facts could be brought out and the merits revealed, and complained of the action taken by the association to secure such a hearing; and the association further alleges that the hearing before the interdepartmental committee was held at the solicitation of those opposed to a modification of the decree.

Further answering said paragraph, the association admits that it was represented at said hearing and that others also appeared at said hearing in opposition to modification of the decree, but denies the allegation in said Paragraph XIX that no evidence was presented evidencing the existence of a monopoly or restrain of trade on the part of the defendants, and the association alleges on the contrary that at said hearing the evidence was most conclusive to show the danger to the people of the United States from the monopolistic tendencies of the defendants and showed that the public welfare demanded the maintenance of the consent decree.

The association refers to the record of the hearings before the interdepartmental committee in substantiation of its allegations and submits the record of such hearings herewith for examination by the court.

The association admits the huge size of Armour & Company as is again alleged in this paragraph and repeats the allegation that it is not in the interest of the public that said concern be permitted to

increase its power and size by extending its business into unrelated lines.

The association denies all the allegations contained in said Paragraph XIX with reference to the existence of a monopoly on
253 the part of wholesale grocers and repeats those allegations heretofore made with regard to the large number of different channels which exist for the distribution of food products and to the existence of the most active kind of competition to the benefit of the public of the United States between such channels.

In further answer, the association denies that before the hearing of the interdepartmental committee the wholesale grocers charged that the defendant Cudahy Packing Company was building enormous canning factories in the Hawaiian Islands, and alleges that, on the contrary, reference to the interest of the Cudahy Packing Company in pineapple industry was contained in a letter of Honorable John W. Weeks, Secretary of War of the United States, opposing the extension of the defendant packers into the handling of food products not connected with the packing industry. Said letter is as follows:

MOUNT PROSPECT, LANCASTER, N. H.,
August 22, 1919.

HON. WILLIAM S. KENYON,
United States Senate, Washington, D. C.

MY DEAR KENYON: I am well aware how ineffective it is for one who has not heard all the evidence to pass on any pending matter, and moreover, it is almost an impertinence for a farmer living in the extreme northern end of New Hampshire to make a suggestion relative to legislation, but after I finish my day's work I have little to do except to look over the papers, and I am following some of the activities of my friends in Washington with interest.

One of the things now receiving a great deal of newspaper attention, and in which we are all more or less interested, is the question of food supplies, and in that connection the activities of the packers are receiving the usual denunciations and defense. I have rather positive views on that subject, which may or may not accord with yours, but, in any case, I want to very briefly send them to you.

Such investigations as I have made of the packers' activities in the past leads me to the conclusion that they handle the meat business of the country most efficiently and that if there were not such organizations as the packers with their methods of distribution the consumers would probably pay more for their meat products and in many cases not get as good meats as they do under present conditions. I doubt if that general proposition can be successfully controverted, and, personally, I think it would be a pity to interfere with a system that enables a citizen in the most remote section to get the benefit of this great business with almost as much regularity and with very little more cost than the citizen in the large center, but there, I think, the packers ought to stop. Unfortunately, they have not done so and,

as I see it, are gradually reaching out and either temporarily or permanently controlling other food products. They did it during
254 the war without any question, purchasing the output of many canning factories, the products of which had nothing whatever to do with the meat business, and selling it to the Government in many cases or to others in some cases.

I am told, for example, that the Cudahys are building enormous canning factories in the Hawaiian Islands, and purpose controlling the canned-pineapple industry, which is a very important one there, as you know. I do not think that that kind of activity should go on. It would be unthinkable and certainly unbearable to permit a half-dozen men or a half-dozen firms to obtain control of the food supply of this country, even assuming that it would, on the whole, be efficiently managed. Undoubtedly, the packers will contend—and the contention has a great deal of merit—that having such distribution facilities for their meat products, those facilities should be worked to their full capacity to get the highest efficiency and a resulting lower cost and that for that reason they should go into the manufacture and distribution of other products than meat. But there is grave danger of trouble resulting from such a monopoly which is too great to warrant its being permitted even if there is a lessening of efficiency as a result.

If you could work out a solution of this difficulty which would divorce the packers from handling of any food products not related to the legitimate packing industry, my impression is that you would leave that part of the high cost of living problem in the best possible shape.

I am sure you will pardon this intrusion and will file my letter in the good old waste basket if you do not see anything in it which merits your consideration.

Sincerely yours,

JOHN W. WEEKS.

The association denies the allegations in Paragraph XIX to the effect that no farm organizations appeared before said interdepartmental committee in opposition to modification of said decree, and alleges the exact contrary to be the case; and further denies the allegation in said Paragraph XIX that farm organizations representing millions of producers asked the Department of Justice to move for such modification. The association alleges that the farm organizations of the country are fully alive to the danger to the farmer through the extension of the defendants' monopoly and are bitterly opposed to same.

With regard to the allegations of said Paragraph XIX setting forth the lack power of Congress to in any way modify the terms of the consent decree, the association alleges that Congress has ample power to repeal the existing laws against monopolies and organizations in restraint of trade, but that Congress manifestly considers such an exercise of its power would be contrary to public interest.

The California Cooperative Canneries, by its vice president and general manager, has appeared at hearings of Congress and urged Congress to legislate so as to vacate or modify the decree, but such action has not been recommended or favored by any committee of either the Senate or House of Representatives.

255 The association denies absolutely the truth of the statement contained in said Paragraph XIX that the decree in this case has never met with the approvel of any of the Agricultural Committees in Congress. The association alleges that on the contrary, said decree has met with the approval of both Houses of Congress and also with the committees having charge of legislation affecting the business of the meat packers.

The following are a few extracts from statements made in Congress with reference to said decree:

Extracts from Congressional Record regarding consent decree

Senator Robinson:

"For some months a somewhat unusual proceeding has been in progress. A committee composed of one representative from the Department of Justice, another from the Department of Agriculture, and a third from the Department of Commerce have been conducting a quasi-judicial proceeding, and without any authority of law, within my knowledge, to determine the question of policy underlying a decree of the court affecting very important subjects. The decree of the court is intimately related to questions of legislation, not only those which Congress has heretofore considered but others which Congress is now considering and may be called upon to determine in the early future." (Congressional Record, Feb. 3, 1922, page 2339.)

Senator La Follette:

"Mr. President, I must say that I think it very important that the Committee on Agriculture should investigate this whole matter, as provided in the resolution. If such an investigation is made, I am convinced that facts would be disclosed which would result in such a report to the Senate as would insure legislation which would so safeguard this consent decree that neither the present Attorney General nor any successor will give assent to its modification." (Congressional Record, Feb. 3, 1922, page 2339.)

Senator Spencer:

"I agree with the Senator from Wisconsin that the decree should not be modified." (Congressional Record, Feb. 3, 1922, page 2340.)

Senator Owen:

"Mr. President, as I understand this matter, in effect the consent decree was the basis of most important legislation in this body. Having obtained that legislation upon that consent decree, the parties now desire to change the contract upon which the Congress of the United States acted. I can not see any reason why we should not institute this inquiry in order to be informed, and I see every reason

why we should demand to know before it is too late, because
256 after the decree has been entered it will be too late." (Congressional Record, Feb. 3, 1922, page 2342.)

Senator Norris:

"It may be that somebody can show a reason why the decree ought to be modified. I do not know of any." (Page 2343).

"* * * I am entirely in sympathy with the proposition of passing the resolution here, or of passing a law—perhaps it ought to go through both Houses—instructing the Attorney General or the Department of Justice not to consent to any decree without submitting the facts to Congress and first obtaining their consent. I am inclined to think that when the Attorney General thinks of the matter in the light of what is shown by the record of the court and the Congress put together he would not do that." (Congressional Record, Feb. 3, page 2343.)

Senator Harris:

"Mr. President, several days ago I brought this matter to the attention of the Senate and urged that the Attorney General not modify the decree, as the packer legislation that was passed was based on that decree, and it would be unjust to the Congress to modify it in any way." (Congressional Record, Feb. 3, 1922, page 2343.)

Senator Caraway:

"Without being at all antagonistic to the Senator, I had made up my mind that the people have a right under this decree that the Attorney General has neither the legal nor the moral right to give away. I think the people acquired a right under this decree." (Congressional Record, Feb. 3, 1922, page 2343.)

Senator Pomerene:

"From the statements that have been made here it looks very much as if the entering of that decree might have had some influence with the conference committee in the preparation and presentation of its report. If that is so, then there is an additional reason why the Congress should be on its guard so as to protect the interests of all the people." (Congressional Record, Feb. 3, 1922, page 2344.)

Congressman Schall:

"This is a question of whether we want a Government based on monopoly or a system of Government based on competition. The question is, Is it American for this or any monopoly to be allowed to retain special privileges and be given further opportunities over the one thing which concerns the people's life; namely, food? We should all be for a competitive system. If we do not stop this thing now, it will not be very long—seven years at their present rate
257 of turnover—until the packers control the whole food business of the United States.

"This is certainly of vital interest to Congress, and if this decree is modified Congress should pass a resolution to have laid before it the evidence and testimony on which that decision was rendered." (Congressional Record, December 5, 1921, page 11.)

Senator Harris:

"It shows that the meat packers, who have kept a lobby here all these years opposing any regulation of their business, are not satisfied with anything that will do justice to the consuming public of this country, and as soon as legislation is passed and a decree is entered they immediately take steps to have it changed." (Congressional Record, January 4, 1922, page 857.)

Senator Lodge:

"What has been the history of that group of men who run those packing establishments? It has been a history of utter defiance of law and public opinion. * * *." (Congressional Record, June 30, 1906.)

During the year 1921 Congress, after long investigation, passed a statute, known as the packers and stockyards act of August 15, 1921, for the express purpose of regulating and controlling the monopoly of the defendant packers over meat and meat-food products. Originally it was proposed to extend such regulation and supervision to the dealings of the defendants in the unrelated commodities, but upon the entry of the decree herein Congress assumed that said decree finally settled the questions arising out of the handling of unrelated commodities by the defendants, and the bills introduced in Congress were amended so as to strike out the provisions which related to the handling of such products by the defendants.

The association refers to the reports of the congressional committees having to do with the planning of the packers and stockyards act, and to the discussions set forth in the Congressional Record with reference to said act in support of the statement herein made that the decree was accepted by Congress with approval and that the packers and stockyards act was framed upon the existence of the decree herein.

With regard to the allegation in said Paragraph XIX referring to the investigations made by the Federal Trade Commission of the defendant meat packers, the association refers to the minutes and reports of said investigation as a refutation of the allegations of this paragraph with respect to the Federal Trade Commission, which the association alleges is a governmental body honestly and diligently endeavoring to enforce the laws over which it has jurisdiction, and the association alleges that the records and the reports of that commission and also the evidence obtained by the Department of Justice show repeated violations of statutes by the defendants.

258 The association further alleges that the real reason why the defendant packers consented to the entry of the decree was not as stated by petitioner, but because they well knew they were guilty of many violations of law and were subject to civil and criminal prosecutions which were threatened and about to be instituted against them, and that they therefore solicited and consented to the decree herein as a means of securing absolution from the consequences of their unlawful acts.

The association, in further answer to said paragraph, denies the truth of any of the allegations of said Paragraph XIX, attacking the wholesale grocers' system of distribution, and alleges that the wholesale grocers distribute food products economically and efficiently, although such method of distribution is not in issue here and not in any way involved.

The association, however, alleges that the meat packers, when distributing unrelated food products, adopt substantially the same method, except in so far as they are able, by reason of their great power, to secure preferential treatment from the railroads. The association again refers to and urges a comparison of the figures between the prices paid to the raisers of livestock and the producers of the unrelated commodities and the prices paid by consumers for the same products as absolute proof that there is no public advantage in having the food of the Nation in the control of the defendants.

The association denies that the complaint in this action was brought for its benefit or at its solicitation, and alleges, on the contrary, that the suit was brought by the Attorney General of the United States, representing the people of the United States, and that the decree herein is of great benefit to the general public.

The association further alleges that said decree was eagerly solicited by the defendants in order to avoid other prosecution.

The association repeats that the conduct of the defendants, prior to the entry of said consent decree, was unlawful, and that they were working in close cooperation with each other, and that the allegations contained in said Paragraph XIX as to the defendants having no relation with each other are absolutely untrue, as shown by repeated investigations; and the association further repeats the allegations above set forth that such unlawful combinations are in no way authorized by the Webb Export Act.

Paragraph XX

In answer to the allegations of Paragraph XX of the intervening petition, the association admits, upon information and belief, that the interdepartmental committee appointed by the Attorney General made the report to the Attorney General set forth in said Paragraph XX of the intervening petition.

Paragraph XXI

In answer to the allegations of Paragraph XXI of the intervening petition, the association admits that in answer to a
259 resolution adopted by the Senate of the United States, being Senate Resolution No. 211, of February 3, 1922, the Attorney General submitted to the Senate a report which is set forth in part in said Paragraph XXI of the intervening petition.

The association alleges that said Senate resolution was as follows:

"Resolved, That the Attorney General of the United States be requested to report to the Senate (a) what steps, if any, have been taken to enforce and carry out the terms of said decree, (b) what modification, if any, has been proposed to him, or is being considered by him, with a view to his applying to the court for the adoption thereof, (c) any and all evidence which may have been taken in the recent hearings on the subject before the representatives appointed by the Attorney General's Office: And be it

"Resolved further, That the Committee on Agriculture and Forestry be authorized and directed to investigate this entire matter fully and recommend to the Senate what action it deems necessary and desirable."

And the association further alleges that said resolution, together with the discussions of said resolution as contained in the Congressional Record at the time of its adoption, part of which discussion is set forth in Paragraph XIX above, clearly indicate that it was adopted because of the apprehension of the Senate that the decree might be modified in some respect and that said resolution and discussions show clearly the attitude of the Senate with regard to said decree and utterly refutes the allegation contained in the said intervening petition in Paragraph XIX to the effect that said decree has not met with the approval of Congress.

Paragraph XXII

In answer to the allegations of Paragraph XXII of the intervening petition, your association denies that any modification of this decree would be to the public interest and alleges, on the contrary, that said modification is sought solely in the benefit of the defendant packers, and in particular for the benefit of Armour & Company, whom the intervening petitioner really represents.

Paragraph XXIII

In answer to the allegations of Paragraph XXIII of the intervening petition, the association admits that it denies any right on the part of the intervening petitioner to be heard for the purpose of vacating or modifying said decree, and alleges that the position of the intervening petitioner in seeking to attack and destroy said decree is entirely different from the position of the association in asking to be heard on an application made by any of the parties seeking to modify the decree, and the association denies that the petitioner has any special or legitimate interest in this litigation, and that the
260 only reason this petition is made by the intervening petitioner is to hide and conceal from the court the fact that this move is being directed by Armour & Company, which completely controls and dominates your petitioner's actions.

Paragraph XXIV

In answer to the allegations of Paragraph XXIV of the intervening petition, the association denies that the remarks of Judge Stafford contained therein in any way constitute a judicial suggestion or ruling that that decree is in any way invalid or subject to attack and further alleges that the facts suggested in said remarks are in no way before the court in this proceeding.

Paragraph XXV

In further answer to the intervening petition, the association repeats the allegations above set forth to the effect that the intervening petitioner is an agent and representative of Armour & Company and that the intervening petitioner is entirely under the domination and control of Armour & Company, and that by reason of said facts the intervening petitioner is bound by the written consent to the decree herein heretofore executed by Armour & Company.

Paragraph XXVI

And for a further answer, the association alleges that in any event the intervening petitioner is not entitled as a matter of law to be granted intervention for the purpose of vacating or modifying said decree.

Wherefore, the association asks that the intervening petition of the California Cooperative Canneries be dismissed on the following grounds:

(1) That said California Cooperative Canneries is not a party to this proceeding, and not being a party is not entitled to intervention for the express purpose of vacating and nullifying all that has been done herein.

(2) That the decree herein having been entered upon the consent of the parties hereto, plaintiff and defendants, said decree can not be vacated or set aside upon application of any intervenor without the consent of the original parties, and that it nowhere appears that said original parties have consented to the modification or setting aside of the decree as prayed for by the petitioner.

(3) That on the contrary, it appears herein that the Attorney General of the United States has refused to move for a modification of said decree or consent thereto, although requested so to do by the petitioner, and that without the consent of the United States of America, his court is without jurisdiction to modify or vacate said decree upon the application of any outside party.

261 (4) That it appears that at least three of the five defendant packers state that they are opposed to modification of said decree and without the consent of all of said defendants as well as the

consent of the Government, the plaintiff herein, the court is without jurisdiction to vacate or modify said decree.

(5) That action by the court allowing intervention to the petitioner, without having first determined whether the plaintiff and the defendants are prepared to consent to the vacating or modification of said decree would be futile, as it is beyond the power of the court to vacate or modify said decree without such consent.

(6) That during the period of the two years, since the date of the decree, February 27, 1920, the positions of the parties have materially changed. Property has been sold and disposed of by certain of the defendants, and proceedings and steps undertaken to carry out the terms of the decree by both Government and packers, and the vacating or modification of such decree by the court at this time would be in violation of the rights of all parties.

(7) That the decree constitutes an agreement between the plaintiff, the Government of the United States, and the defendant packers which cannot be vacated or modified by the court, by either of the parties to the action, or by any intervening party except upon proof of fraud or mistake of facts, and no such proof is offered or produced to the court.

(8) That there is evidence before the court taken in the proceedings before the interdepartmental committee which would indicate that the petitioner is so clearly identified with one of the defendants, Armour & Company, which company has a mortgage interest in the property of said petitioner, as to warrant the conclusion that the petition for leave to intervene for the purpose of vacating or modifying the decree, is not made in good faith but is an attempt on the part of one of the defendants, acting by and through the intervening petitioner, to avoid in some manner the consent given by it to the decree entered herein on February 27, 1920.

(9) That the decree herein was a final decree determining the issues between the United States of America and the defendants, and that the court is without jurisdiction to vacate or modify the same; that jurisdiction was retained of said decree as set forth therein merely for the purpose of taking such action as might be necessary to carry out and enforce the decree and not for the purpose of vacating and modifying the decree.

(10) That the modification or setting aside of the decree as prayed for by the petitioner is contrary to the public interest and would result in an extension of the monopoly of the defendants contrary to law, and that in particular the portion of the public represented by the association would be seriously injured and would lose the protection afforded them by the decree against the unlawful acts of the defendants.

NATIONAL WHOLESALE GROCERS
ASSOCIATION OF THE UNITED STATES,
By M. L. TOULME, *Secretary*.

262 *Duly sworn to by M. L. Toulme; jurat omitted in printing.*

In Supreme Court of the District of Columbia

Amendment and order

Filed June 14, 1922

* * * * * * *

Comes now American Wholesale Grocers' Association and shows that:

1

Under its former name, Southern Wholesale Grocers' Association, it filed on September 10, 1921, an application to intervene herein, which application was granted and the intervention filed on the same day.

2

Likewise under its former name, this intervener filed an answer to the application of California Cooperative Canneries.

3

On May 10, 1922, by proper corporate action, the name Southern Wholesale Grocers' Association was changed to American Wholesale Grocers' Association, and such action was certified to and filed with the secretary of the State of Tennessee and with the county clerk of Shelby County, Tennessee, the county and State where movant is incorporated.

4

No other change was made in the powers, purposes, and corporate rights of movant than the change in name aforesaid.

Wherefore it is prayed that said petition of intervention, the order granting the same, and the answer to the application of the
263 California Cooperative Canneries be amended by substituting therein for Southern Wholesale Grocers' Association, American Wholesale Grocers' Association.

EDGAR WATKINS,
Attorney for American Wholesale Grocers' Association.

Read and considered. It is ordered that, as prayed, American Wholesale Grocers' Association be, and the same is hereby, substituted for Southern Wholesale Grocers' Association, and that the intervention of Southern Wholesale Grocers' Association hereafter proceed in the name of American Wholesale Grocers' Association.

This 14th day of June, 1922.

JENNINGS BAILEY, *Judge.*

In Supreme Court of District of Columbia

Objections of Cudahy Packing Co. to motion of California Cooperative Canneries, &c.

Filed June 14, 1922

* * * * * * *

Comes now the defendant, the Cudahy Packing Company, by its attorney, Thomas Creigh, and objects to the granting by this honorable court of the motion filed herein by the California Cooperative Canneries, asking for leave to intervene for the purposes set forth in the intervening petition thereto attached and shows the court that such intervention should not be allowed or granted for the following reasons:

1

The decree having been entered by the consent of all parties thereto, it is equally necessary that the consent of all parties be given before intervention is allowed. This defendant objects.

2

Under Paragraph VI of the intervening petition tendered with said motion it appears that the California Cooperative Canneries claim that such decree is void for want of jurisdiction and certain other reasons.

In such case said California Cooperative Canneries have a remedy otherwise than by being made a party intervener herein—and to permit them to be made such party intervener for the purpose of attacking said consent decree would be unwarranted and inconsistent with proper procedure.

3

Said decree was entered February 27, 1920, and has therefore been in force and effect for more than two years and the several defendants in such time have in good faith been proceeding in all respects to carry out its terms.

264

Said California Cooperative Canneries has been fully advised at all times of the entry of said decree and of such steps and procedure and failure on its part earlier to file its application constitutes laches and estops it from now asserting any right, if ever it had any, to seek to vacate or modify the terms of said decree.

THE CUDAHY PACKING COMPANY.
By THOS. CREIGH, *Its Attorney.*

(Indorsed:) Filed in open court under leave of Bailey, J., June 14/22. Morgan H. Beach.

In Supreme Court of District of Columbia

Acknowledgments of service of petition of California Cooperative Canneries for leave to intervene

Filed June 23, 1922

* * * * * * *

Services is hereby acknowledged of a copy of the motion of the California Cooperative Canneries for leave to intervene herein, together with a copy of the intervening petition attached thereto, and also of a copy of the notice of the hearing of the said motion, this 20th day of April, 1922.

H. M. DAUGHERTY,
Attorney General of the United States.

Service is hereby acknowledged of a copy of the motion of the California Cooperative Canneries for leave to intervene herein, together with a copy of the intervening petition attached thereto, and also of a copy of the notice of the hearing of the said motion, this 20th day 1922.

PEYTON GORDON,
United States Attorney for the District of Columbia.

Service is hereby acknowledged of a copy of the motion of the California Cooperative Canneries for leave to intervene herein, together with a copy of the intervening petition attached thereto, and also of a copy of the notice of the hearing of the said motion, this 20th day of April, 1922.

CONRAD H. SYME,
Attorney for Armour & Company Group.

Service is hereby acknowledged of a copy of the motion of the California Cooperative Canneries for leave to intervene herein,
265 together with a copy of the intervening petition attached thereto, and also of a copy of the notice of the hearing of the said motion, this 24th day of April, A. D. 1922.

M. W. BORDERS,
Solicitor for Morris & Company (M. E.), Morris Packing Company (M. E.), Morris & Company (N. J.), Morris & Company (La.), Morris & Company of Pennsylvania (Pa.), Joseph Stern & Sons, Inc., Brooklyn Beef & Provision Co., Condit Beef and Provision Company, Corwin, Wilde Company, Donnelly & Company, Inc., National Hotel Supply Company, Chamberlain & Company, Inc., J. M. Wilson Company, Middletown Beef and Provision Company, Glenn & Anderson Co., Edward Morris, Nelson Morris, Louis H. Heyman, Charles M. MacFarlane, and H. A. Timmins.

Service is hereby acknowledged of a copy of the motion of the California Cooperative Canneries for leave to intervene herein, together with a copy of the intervening petition attached thereto, and also of a copy of the notice of the hearing of the said motion, this 28th day of April, 1922.

THOS. CREIGH,
Attorney for Cudahy Packing Company Group, Including Cudahy Individual Defendants.

Service is hereby acknowledged of a copy of the motion of the California Cooperative Canneries for leave to intervene herein, together with a copy of the intervening petition attached thereto, and also of a copy of the notice of the hearing of the said motion, this 28th day of April, 1922.

J. P. LIGHTFOOT,
Attorney for Wilson & Company Group.

Service is hereby acknowledged of a copy of the motion of the California Cooperative Canneries for leave to intervene herein, together with a copy of the intervening petition attached thereto, and also of a copy of the notice of the hearing of the said motion, this 28th day of April, 1922.

HENRY VEEDER,
Attorney for Western Meat Company, Oakland Meat & Packing Company, Nevada Packing Company.

Service is hereby acknowledged of a copy of the motion of the California Cooperative Canneries for leave to intervene herein, together with a copy of the intervening petition attached thereto, and also of a copy of the notice of the hearing of the said motion, this 26th day of April, 1922.

EDGAR WATKINS,
Attorney for Interveners Southern Wholesale Grocers Association et al.
ATLANTA, GA.

266 Service is hereby acknowledged of a copy of the motion of the California Cooperative Canneries for leave to intervene herein, together with a copy of the intervening petition attached thereto, and also of a copy of the notice of the hearing of the said motion, this 20th day of April, 1922.

H. W. VAN DYKE,
Attorney for Intervener National Wholesale Grocers Association.

In Supreme Court of District of Columbia

Memorandum of court

Filed October 16, 1922

* * * * * * *

The California Cooperative Canneries has moved for leave to file an intervening petition in this cause, seeking to set aside or modify the consent decree heretofore entered. The interest claimed by the canneries in this suit is based upon a contract between it and one of the defendants, Armour and Company, under the terms of which the latter agreed to purchase from the canneries such products as Armour and Company might require for the period of ten years. The contract also contains a provision that in case of material interference by governmental action Armour and Company might terminate the agreement upon sixty days' notice.

The canneries claim that the consent decree entered is void as to it for these reasons: That it is a consent decree based upon an agreement made between the Government and the defendants prior to the bringing of the suit, which provided that this suit should be brought and this particular decree entered by consent; that in the decree the defendants maintain the truth of the allegations of their answers, which deny any wrongdoing on the part of the defendants, and that there was therefore not only no sufficient finding of facts to authorize the decree, but even an express refusal to admit such facts; and in addition that the whole proceedings were a fraud upon the court. None of the parties to the suit are before the court seeking to set aside the decree. It was entered on February 27, 1920, and pursuant to its provisions several of the defendants have disposed of large interests in what have been called "unrelated commodities," doubtless in some cases at considerable loss. If the decree were set aside, it would be impossible to restore the status quo. Without going into the question of laches in the application for leave to intervene, for the petition sets up grounds which might be sufficient to avoid that defense, I think that the motion for leave to intervene should be overruled.

Under the present equity rules no recital of facts upon which the decree is based is necessary, and the refusal of the defendants to admit any violation of the law may well have been a precaution against the use of such admissions in a criminal prosecution, although the statute itself provides against such use. Parties may compromise their differences, and a consent decree as between them is certainly of fully as binding force as a decree rendered after a full
267 hearing on the facts. That such a decree is entered pursuant to an agreement made prior to the bringing of the suit does not in my opinion render the decree less effective, where the court has not been, by any deception as to the facts, induced to enter a

decree which may be injurious to third parties or in excess of the jurisdiction of the court.

If the decree was entered into by Armour and Company for the purpose of preventing the fulfillment of any legal obligations it might owe to the canneries under it, an action at law in the proper forum would afford relief.

The motion for leave to intervene will be overruled.

JENNINGS BAILEY, *Justice.*

In Supreme Court of District of Columbia

Petition of California Cooperative Canneries for rehearing

Filed January 10, 1923

* * * * * * *

The petition of the California Cooperative Canneries for rehearing of its application for leave to intervene herein respectively shows as follows:

1. October 16, 1922, the court filed an opinion holding that your petitioner's application for leave to intervene in this suit should be denied, but no formal order overruling the said application has been entered.

2. The said opinion briefly sets out the claims of your petitioner, and then considers the same, and upon such consideration the court bases its decision that your petitioner's application for leave to intervene should be overruled.

3. Your petitioner further avers that the several grounds upon which the court bases its decision do not support the same, and the denial of your petitioner's application for leave to intervene is erroneous, and operates grievous and irreparable injury to your petitioner.

4. Your petitioner contended, and still contends, (a) that the consent decree of February 27, 1920, is void and of no effect in law; (b) that your petitioner has no plain, adequate, and complete remedy at law, and has the right, and should be permitted, to intervene in this suit; and (c) that the agreement or contract which the Government and the defendants in this cause made for the entry of the particular decree which was passed in this suit February 27, 1920, was and is void, both at common law and under the Federal antitrust statutes.

5. Under paragraphs 2 to 8, both inclusive, of the said decree, both as set out in the said agreement and as entered by this court, the defendants are enjoined (a) from owning any interest in stockyards and enterprises appertaining thereto, and (b) from manufacturing or dealing in the unrelated lines, and particularly the lines
268 handled by wholesale grocers; that the said agreement is not that the parties defendant shall discontinue or abandon any contracts, combinations, or conspiracies in restraint of trade, prohibited by section 1 of the Sherman Act, nor that they shall desist

or refrain from monopolizing, or attempting to monopolize, trade, prohibited by section 2 of the Sherman Act, in order that they shall cease and desist from any discrimination in prices, or unfair practices, substantially lessening competition, prohibited by the Clayton Act, but the said agreement is that they and each of them, severally and in their separate and individual capacities, shall refrain from engaging or being interested in the described businesses, in any circumstances, even though they lawfully conducted themselves in such businesses, and conducted such businesses legally, in all respects, in accordance with the laws of the United States; that the said agreement between the Government and the defendants, when sanctioned by the court, made the act of engaging in the described businesses illegal in itself, if the judicial sanction be valid; and that agreements to close down and abandon an existing business are unlawful at common law because against public policy and are also unlawful under the antitrust statutes.

U. S. v. Addyston Pipe, etc., Co., 85 Fed. 271.
Dr. Miles Medical Co. v. John D. Park, etc., Co., 220 U. S. 373, 55 L. Ed. 502;
John D. Park, etc., Co. v. Hartman, 153 Fed. 24.
Oliver v. Gilmore, 52 Fed. 562;
More v. Bennett, 140 Ill. 69, 29 N. E. 888;
Tuscaloosa Ice Mfg. Co. v. Williams, 127 Ala. 110, 28 So. 669;
Stewart v. Stearns, etc., Lumber Co., 56 Fla. 570, 48 So. 19;
Clemons v. Meadows, 123 Ky. 178, 94 S. W. 13;
Kosciusko Oil Mill, etc., Co. v. Wilson Cotton Oil Co., 90 Miss. 551, 43 So. 435;
6 R. C. L., page 791, par. 196;
19 R. C. L., page 126, par. 94.

6. Your petitioner further avers that the Attorney General of the United States had no authority to require, or even to agree, that the defendans should wholly abandon lawful existing businesses, and refrain from legally engaging therein; that the Congress of the United States makes it the duty of the several district attorneys of the United States under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain violations of the antitrust laws; that the authority of the Attorney General is limited to enforcing the laws of the United States; that his authority under the antitrust statutes is limited to agreeing to a decree which will prohibit the defendants from contracting, combining, or conspiring to violate such statutes, or to use their property or business in violation thereof; and your petitioner particularly avers that the Attorney General has no authority to enter into an agreement for a decree which will prohibit citizens of the United States absolutely from legally engaging in the lawful business of stockyards, or manufacturing and distributing the so-called unrelated lines.

7. Your petitioner further alleges that this court is wholly
269 without jurisdiction, power, or authority to sanction judicially the illegal agreement contained in paragraphs 2 to 8, both

inclusive, of the said consent decree, and is also wholly without jurisdiction, power, or authority to enter the injunctions contained in paragraphs 1 and 9 of the said decree, substantially in the language of the statute; that under section 4 of the Sherman Act, and section 14 of the Clayton Act, the courts of the United States have jurisdiction to prevent and restrain violations of those acts, and, in a proper case disclosing such violations, it is the duty of the courts to enforce the law by enjoining the specific acts shown to be in violation thereof, but the courts have no jurisdiction, power, or authority to give judicial sanction to an agreement which provides that the defendant shall absolutely close down and abandon lawful businesses in which they are severally and individually lawfully engaged, and thereby destroy their competition with the wholesale grocers in those businesses, and their competition among themselves; that sections 2 to 8, both inclusive, of the said consent decree do not enjoin the defendants from doing any certain specific acts which restrain trade in the described businesses, but require the defendants wholly to abandon and refrain from engaging in the businesses described, in any way, or at any time; that the injunctive provisions contained in paragraphs 1 and 9 of the said decree are void, in that each is merely a general injunction against all possible breaches of the antitrust law, and not against any specific acts in violation thereof;

Swift & Company v. U. S., 196 U. S. 375, 49 L. Ed. 518;

N. Y. N. H. & H. Ry. Co. v. Interstate Commerce Commission, 200, U. S. 361, 50 L. Ed. 515;

U. S. v. Agler, 62 Fed. 824;

Southern Pacific Co. v. Colorado Fuel & I. Co., 101 Fed. 779;

Privett v. Pressley, 62 Ind. 491; 14 R. C. L. p. 310, par. 8;

and that the remaining paragraphs of the said decree, namely paragraphs 10 to 18, both inclusive, are also void, in that they are intended to render effective the void injunctive orders contained in paragraphs 2 to 8 thereof, both inclusive.

8. Your petitioner further avers that the rule which makes it unnecessary to recite or state certain matters does not dispense with the requirement that the fundamental and essential jurisdictional facts to support the decree must appear in the record; that the answers of the defendants in this suit categorically and directly deny each and every material allegation in the bill of complaint; that no evidence whatever was introduced, or was intended to be introduced, to meet or overcome the averments of the answers denying all of the material allegations of the bill; that the allegations of the bill must be taken as of no probative effect, and the averments of fact in the answers must be taken and stand as admitted; that this case was presented to the court on bill and answers, and is to be considered on the averments of the bill which are not denied by the answers (Terral v. Burke Construction Co., 257 U. S. 529, 531; Iowa v. Illinois, 147 U. S. 1, 7); that in this state of the pleadings, the
270 Government and the defendants entered into a stipulation for a decree which should not contain a recital of facts, but which

should contain a recital that the defendants consented to the entry of the decree upon the condition that the decree should not constitute an adjudication that the defendants had violated any law of the United States, that this recital or provision in the decree, when entered by the court, constituted an adjudication of the same dignity and authority as any other adjudication in the said decree, and even more so, because the said consent decree was entered exclusively and expressly upon the condition that such recital (becoming an adjudication when entered) should be a part of the decree itself; that neither the agreement of the parties, nor the decree itself, admitted any facts which met or overcame the averments of the answers; that the averments of fact in the answers, denying the allegations of the bill that the defendants had violated any law of the United States, standing admitted of record, as they do, conclusively causes the record to disclose no case or controversy between the Government and the defendants, such as is required by the Federal Constitution before the Federal courts can take jurisdiction, and the court was wholly without any jurisdiction, power, or judicial authority to enter any decree against the defendants in the premises, and particularly the said consent decree which was actually spread upon the minutes of this court.

9. Your petitioner further avers that the courts of the United States, including this court, are of limited jurisdiction; and the record must affirmatively show the facts necessary to sustain its jurisdiction; that there is no presumption of jurisdiction, as in the case of a common law English or State court, unless the contrary appears, but the record must show affirmatively that the court has authority, under the Federal Constitution, to hear and determine the case (Dred Scott v. Sanford, 19 Howard 401; Turner v. Bank of North American, 4 Dallas 11; Jackson v. Ashton, 8 Peters 148; Ex Parte Smith, 94 U. S. 456; Robertson v. Cease, 97 U. S. 648); that even if it be presumed that all the facts necessary to give the court jurisdiction to render the particular consent decree which was entered in this suit, yet the said decree is void on its face because it shows no facts to support the jurisdiction of the court, but on the contrary, the provision of the decree that it shall not constitute an adjudication that the defendants have violated any law of the United States affirmatively destroys any possible basis upon which the jurisdiction of the court can be upheld.

U. S. Constitution, Art. III, Sec. 2;
Muskrat v. U. S., 219 U. S. 346, 55 L. Ed. 246;
Fairchild v. Hughes, U. S. Adv. Ops. No. 10, p. 260, Apr. 1, 1922;
Windsor v. McVeigh, 93 U. S. 274, 33 L. Ed. 914;
Meguire v. Corwine, 101 U. S. 108, 25 L. Ed. 899;
Reynolds v. Stockton, 140 U. S. 254, 35 L. Ed. 464;
United States v. Trans Missouri Freight Ass'n, 58 Fed. 58;
Kreider v. Cole, 149 Fed. 647;
Peoples Bank v. Gilson, 161 Fed. 286, 291;

271 Munday v. Vail, 34 N. J. L. 418;
State v. Nast, 108 S. W. 563, 567, 568 (Mo.);
Watson v. Bair, 74 So. 417 (Fla.)
Griffith v. Henderson, 45 So. 1003 (Fla.);
Israel v. Reynolds, 11 111. 218, 223;
State v. Baughman, 38 Ohio St. 455, 459;
Hubler v. Pullen, 9 Ind. 273, 68 Am. Dec. 620;
Stafford introduction to "The Law Restated";
Hughes "The Law Restated," page 27;
1 Hughes Procedure, pages 22, 23, 58, sec. 5a, 65, 113, sec. 21, 154, 156, sec. 41.
15 C. J. 723, sec. 13, 725;
Id. 734, sec. 34;
Id. 783, sec. 77;
Id. 827, sec. 146;
Id. 915, sec. 300;
21 C. J. 157, sec. 139, note 56 (a);
Id. 485; sec. 565, note 7;
Id. 548–551, secs. 670–673;
Id. 560, sec. 694, note 2;
Id. 642, sec. 821;
Id. 688, sec. 861, note 42 (b);
Id. 813, notes 13–18;
Id. 814, sec. 965;
2 R. C. L. 31, sec. 9.

10. Your petitioner further avers that the court has no power to impose any penalties other than those provided in the statute; that this suit is filed under the antitrust laws; that section 1 of the Sherman Act prohibits contracts, combinations, or conspiracies in restraint of trade; that section 2 of the said act prohibits monopolizing or attempting to monopolize trade; that the Clayton Act prohibits discrimination in prices and unfair practices which substantially lessen competition; that persons violating the Sherman Act are thereby declared guilty of a misdemeanor, punishable on conviction by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or both, in the discretion of the court; that each statute invests the courts with jurisdiction to prevent and restrain violations of it; that by neither act is the court authorized, either expressly or by implication, to enjoin a defendant absolutely from engaging in business in any circumstances or under any conditions; that the utmost limit of the jurisdiction and the power of the court, in such case, is to enjoin the defendant from agreeing, combining, or conspiring with others to restrain trade by monopolizing, or attempting to monopolize, trade, in violation of the Sherman Act, and from violating the Clayton Act by illegally discriminating in prices or by indulging in unfair practices; that in this case the court has perpetually enjoined each defendant, individually and independently, from owning

any interest whatsoever in certain business and from manufacturing and dealing in certain described commodities defined in the
272 said consent decree as unrelated lines, and that the said consent decree is therefore beyond the jurisdiction, power, and authority of the court, and is void.

Windsor v. McVeigh, 93 U. S. 274, 23 L. Ed. 914;
Campbell v. Porter, 162 U. S. 478, 40 L. Ed. 1044;
Cooper v. Reynolds, 10 Wall. 308, 19 L. Ed. 931;
Nash v. Williams, 20 Wall. 226, 22 L. Ed. 254, at 257 and 258;
United States v. Walker, 109 U. S. 258, 27 L. Ed. 927;
Re Sawyer, 124 U. S. 200, 31 L. Ed. 402;
Ex Parte Neilsen, 131 U. S. 176, 33 L. Ed. 118;
Ex parte Cuddy, 131 U. S. 280; 33 L. Ed. 154;
United States v. Am. Tobacco Co., 191 Fed. 371, 382, 383;
Kreider v. Cole, 149 Fed. 647;
Powhatan Coal & C. Co. v. Ritz, Judge, 60 W. Va. 495, 404, 56 S. E. 257;
Chapman v. Parsons, Judge, 66 W. Va. 307; 66 S. E. 461;
Paul v. Willis, 69 Tex. 261, 7 S. W. 357;
Lewis v. Allred, 57 Ala. 628;
Folger v. Insurance Co., 99 Mass. 267;
Fithian v. Monks, 43 Mo. 502;
Seamster v. Blackstock, 83 Va. 232, 2 S. E. 36;
Anthony v. Kasey, 83 Va. 338, 5 S. E. 176;
Story's Equity Pleading, sec. 10;
2 High. Injunctions (4th Ed.), sec. 1425;
Hughes, The Law Restated, page 25, sec. 7;
15 C. J. 810, sec. 106;
15 C. J. 725, sec. 13;
Id. 734, sec. 34;
Id. 802, sec. 101.

11. Your petitioner further avers that the jurisdiction of the Federal courts is derived from the Federal Constitution and laws, and from no other source or sources whatever; that consent of parties can not confer jurisdiction or power on the court to enter a decree which the court had no jurisdiction or power to enter under the authority conferred on it by the Constitution and laws; that the record must affirmatively show the authority of the court to proceed to judgment or decree, and to enter the particular decree which has been passed (The Law Restated, introductory chapter, pages 12, 13, and 14, per Mr. Justice Stafford; 1 High on Injunctions (4th ed.), page 48, Paragraph 31; 1 Hughes on Procedure, pages 22 and 23); that in this case, the only facts before the court are the averments of the answers of the defendants denying all of the material allegations in the bill of complaint, and the decree itself expressly provides that it does not adjudicate that the defendants have violated any law of the United States; that in the absence of facts proving,

or tending to prove, a violation of the antitrust laws, and in the absence of admissions of the necessary jurisdictional facts, the court is wholly without jurisdiction, under the Constitution and laws, including the antitrust laws, to enter the decree against the defendants in this cause, or any decree against them, and the consent
273 of the parties could not confer on the court the jurisdiction necessary to authorize the action which was taken in spreading the consent decree upon the minutes of the court.

Fairchild v. Hughes, U. S. Adv. Ops. No. 10, p. 260, April 1, 1922;
Sevilleta, etc. v. Belen Land Grant, 242 U. S. 595, 61 L. Ed. 514;
Muckrat v. United States, 219 U. S. 346, 55 L. Ed. 246;
Harding v. Harding, 198 U. S. 317, 49 L. Ed. 1066;
Pittsburgh C. & St. L. Ry. Co. v. Ramsey, 22 Wall, 322, 22 L. Ed. 823;
Kreider v. Cole, 149 Fed. 647;
State v. Nast, 108 S. W. 563, 568, 569 (Mo.);
State v. Muench, 217 Mo. 124, 117 S. W. 25;
Marietta v. Henderson, 121 Ga. 399, 49 S. E. 312;
Sennette v. Police Jury, 56 So. 653 (La.);
Story, Equity Pleading, sec. 10;
Stafford, introduction to "The Law Restated," pages 12 to 14;
Hughes "The Law Restated," page 25, sec. 7;
1 Hughes, Procedure, pages 22, 23, 57, 65, 113, sec. 21, 126, sec. 26, 137, 154, 156;
1 High, Injunctions (4th ed.), 48, sec. 31;
15 C. J. 730, sec. 27;
Id. 802, sec. 101, notes 6, 17;
Id. 844, sec. 164;
21 Id. 813, notes 13 to 18;
Id. 814, sec. 965;
Id. 815, notes 55, 56;
Id. 915, sec. 300;
2 R. C. L. 31, sec. 9;
7 Id. 1039, sec. 70;
15 Id. 643, sec. 86;
Id. 645, sec. 90.

12. Your petitioner further avers that the opinion of the court, denying intervention, states that the refusal of the defendants to admit any violation of the law may well have been a precaution against the use of such admissions in a criminal prosecution; that the court was referring to the language of the decree, which recites that the decree shall not constitute or be considered as an adjudication that the defendants, or any of them, have in fact violated any law of the United States; that this provision was the vital condition upon which the consent decree was entered; and that the said condition can not be modified or read out of the said decree for the purpose of establishing or sustaining the jurisdiction of the court to enter it.

2 R. C. L. 31, sec. 9;
15 Id. 646, sec. 90, note 3;
21 C. J. 813, notes 6 to 12;
Id. 815, notes 81 to 83;
Id. 816, sec. 5.

274 13. Your petitioner further alleges that when the court has exceeded its jurisdiction, it should take appropriate steps to correct its action and should of record declare the decree void for want of jurisdiction whenever the matter is called to its attention by either or any party, or by amicus curiæ, or it should act sua sponte.

Campbell v. Porter, 162 U. S. 478, 40 L. Ed. 1044;
Kreider v. Cole, 149 Fed. 647;
1 Hughes Procedure 82;
15 C. J. 732, sec. 27, note 68, 852, sec. 171; 21 Id. 162, sec. 146, 168, sec. 149, 186, sec. 171.

14. Your petitioner further avers that, for reasons apparent on the face of the record, the said consent decree of February 27, 1920, is void, and lapse of time can not validate it.

Windsor v. McVeigh, 93 U. S. 274, 23 L. Ed. 914;
Kreider v. Cole, 149 Fed. 647;
15 C. J. 826, sec. 144, 847, sec. 166.

15. Your petitioner further avers that it is entirely without any plain, adequate, or complete remedy at law, in the premises; that the court is in error in stating in its opinion that if the decree was entered into by Armour & Company for the purpose of preventing the fulfilment of any legal obligations it might owe to the Canneries under it, an action at law in the proper forum would afford relief, since an action at law for damages for anticipatory breach of the said contract would not restore to your petitioner the distribution facilities necessary to the moving of its commodities, but would leave your petitioner (as it and its associates are now left) subject to the dictation and control of the wholesale grocers; that in your petitioner's application for intervention, the contract between it and Armour & Company is set out in full in paragraph 11 thereof, and the said contract, among other things, provides that in case governmental action materially interferes with the performance of the contract by Armour & Company, the said company should have the right to cancel and terminate its agreement by giving sixty days' written notice to your petitioner of its intention so to do, and should not be held liable for any loss resulting therefrom; that if the said consent decree be valid, the said Armour & Company are thereby enjoined from carrying out its said contract with your petitioner, no matter what may have been the reasons of Armour & Company for agreeing with the Attorney General to the consent decree in this cause; that if the said consent decree is void, and this court so declares, your petitioner will then be in position to assert its rights under the said contract; but if the said decree be valid, it constitutes a perpetual barrier against the assertion by your petitioner of any

rights under the said contract between your petitioner and the said Armour & Company.

16. Your petitioner further avers that the said consent decree of February 27, 1920, is in effect a contract between this court and the parties to this suit, regardless of the rights of any third parties, including particularly your petitioner; that this court has no
275 power to contract, or allow others to contract, the exercise of its judicial functions to consenting parties before it, but its jurisdiction must rest exclusively upon the Constitution and laws of the United States and not upon contract or convention; that all Federal courts are creatures of written law; that all Federal courts are of limited jurisdiction; that the record in Federal courts must affirmatively show jurisdiction; that it is the duty of every Federal court to make sure that it has jurisdiction, and so soon as the absence of jurisdiction is noticed the case must be stopped, no matter how far it has gone; that a Federal court can entertain no suit except by authority of an express written enactment; that no Federal court can exercise any jurisdiction not given to the United States by the second section of the third article of the Federal Constitution; that neither Congress nor consent of parties can extend the jurisdiction of Federal courts beyond the constitutional grant; that Federal courts are careful to exercise no jurisdiction not clearly there; that Congress is always anxious to restrict, and not to enlarge, the jurisdiction of the Federal courts; that no inferior Federal court can exercise any jurisdiction except it can point to the particular act of Congress conferring such jurisdiction upon it; that the constitutional grant of judicial power is not self-executing; that Congress has never provided for the exercise of more than a part of the judicial power given by the Constitution; that unnecessary extension of the jurisdiction of Federal courts is undesirable; that Federal courts have no common law jurisdiction, civil or criminal (Rose, Federal Jurisdiction and Procedure, second edition, pages 1–39); and that the said consent decree entered in this suit is therefore void on the face of the record, and should be so declared by this court.

17. Your petitioner further avers that the record in this cause shows a conflict of rulings on intervention; in that the National Wholesale Grocers' Association and the Southern Wholesale Grocers' Association (whose name is now American Wholesale Grocers' Association), neither having any special interest in the subject matter of this suit, have been permitted to intervene herein by the order of this court, after full arguments by counsel and thorough consideration by the court, and the application of your petitioner, California Cooperative Canneries, having a special interest in the subject matter of this suit, has been denied, the presiding justices not being the same in the several instances mentioned.

18. By reason of the matters and things hereinbefore set forth, your petitioner should be accorded the right or privilege of intervention in this suit, for the protection of its rights in the premises.

Wherefore, the premises duly considered, your petitioner respectfully prays as follows:

1. That after due notice of this petition to all parties in interest, a rehearing may be granted to your petitioner on its application for leave to intervene herein.

2. That on such rehearing, the application of your petitioner for leave to intervene may be granted.

276 3. That on such rehearing and intervention being granted, the said consent decree of February 27, 1920, map be declared null and void, as beyond the jurisdiction, power, and authority of this court.

4. That your petitioner may have such other and further relief in the premises as may be just and proper.

CALIFORNIA COOPERATIVE CANNERIES,
By FRANK J. HOGAN, *Attorney.*

Duly sworn to by Frank J. Hogan; jurat omitted in printing.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

Answer and objections of American Wholesale Grocers' Association et al. to petition for rehearing, &c.

Filed February 3, 1923

* * * * * * *

Come now American Wholesale Grocers' Association, Henry G. Sears Company, John Hoffman and Sons Company, Mason, Ehrman & Company, J. M. Radford Grocery Company, Southern Distributing Company, Hall Grocery Company, Albert Mackie & Company, Ltd., The Hicks Company, W. D. Cleveland & Sons, Rapides Grocery Company, and Oliver Finnie Grocery Company, and answering and objecting to the granting of the petition of California Cooperative Canneries filed herein on January 19, 1923, seeking a rehearing on the opinion of this court, [illegible]ered in the above styled case on the 16th of October, 1922, say:

1, 2, 3

These interveners admit the correctness of the allegations of paragraphs 1 and 2 of said petition of said California Cooperative Canneries, and deny, paragraph 3 of said petition.

277 4

Referring to paragraph 4 of said petition, interveners named above admit that said California Cooperative Canneries made the contention therein stated, but these interveners deny the correctness of the stated contentions.

Answering paragraph 5 of said petition of said California Cooperative Canneries, the interveners hereinbefore named respectfully refer to the decree entered in this case on February 27, 1920, for a full and accurate statement of the provisions thereof; but the interveners deny that said decree or any part thereof is erroneous or in violation of any law, statutory or common, and they deny that the said decree is against public policy.

With specific reference to the cases cited by the said California Cooperative Canneries at the end of paragraph 5 of its said petition, these interveners respectfully submit:

Substantially petitioner in the cases referred to beginning with that of United States vs. Addyston Pipe Company, 85 Fed. 271, and concluding with the text 19, R. C. L., page 126, seek to establish the principle of law that covenants, to go out of business, must be ancillary to the main purpose of a lawful contract and necessary for the protection of the covenantee. With such a principle and statement of the law these interveners are not in disagreement. Such a principle, however, has no application to the facts in the instant case.

Throughout the petition for rehearing the petitioner confuses jurisdiction with procedure. It is not claimed by petitioner that this court is without jurisdiction to enjoin monopoly and restraints of trade, nor is the claim definitely presented that attempts to monopolize and tendencies to restrain trade may not be stopped before they become effective. The antitrust statutes specifically confer jurisdiction but seemingly the petition for review is based on the fallacy that the court lost jurisdiction because the allegations of the original bill were denied. The contention, vaguely made but nowhere in the petition definitely stated, means just this: "It was jurisdictional error to enter a decree by consent so long as the allegations of the bill remained denied." When the contention of the petitioner is thus reduced to a definite statement, the fallacy becomes obvious. If proof were required, which it was not when by consent it was waived the action of the court was merely an error in procedure. Such error must be corrected by appeal within the time provided by law or by bill of review, as authorized by Equity Rule 62, of this court. Neither of these methods having been adopted, the decree can not be set aside after the expiration of the term at which it was entered, nor in any event can a stranger to the decree take advantage of error, had there been error.

It is not necessary to take the time of the court to analyze each of the citations in paragraph 5 of the canneries' petition. Brief reference, however, may be made to one or two of the illustrative cases.

278 The Addyston Pipe case dealt with contracts having as their purpose effectually to restrain competition, and which tended to and did create a monopoly. While the court discusses the general principles of sales of business and covenants to refrain from

continuing the particular business which was the object of the sale, the whole case shows that such agreements as were there under discussion to refrain from doing a certain business were with the definite purpose of restraining interstate trade. In the same case on appeal the Supreme Court states this fact very clearly, and says:

"While no particular contract regarding the furnishing of pipe and the price for which it should be furnished was in the contemplation of the parties to the combination at the time of its formation, yet it was their intention, as it was the purpose of the combination, to directly and by means of such combination increase the price for which all contracts for the delivery of pipe within the territory above described should be made, and the latter result was to be achieved by abolishing all competition between the parties to the combination."

See the case in the Supreme Court reported, 175 U. S. 211, 240; 44 L. Ed. 136, 147. The Addyston Pipe case is explained and limited in the case of Anderson vs. U. S., 171 U. S. 604, 617; 43 L. Ed. 300, 306.

The Dr. Miles Medicine Company case, 220 U. S. 373; 55 L. Ed. 502, is another case where the agreements involved, as stated by the Supreme Court:

"had for their purpose the control of the entire trade."

The case of John D. Park vs. Hartman, cited by the Canneries, is a parallel case to the Dr. Miles Medicine Company case. Similarly it may be shown that none of the cases relied on have application to the issues here, where the consent decree was to prevent restraint of trade and monopoly; and not as were the agreements in the Pipe and Medicine cases to effectuate such restraint and such monopoly. The instant case is more analagous to the decree in the case of U. S. vs. American Tobacco Company, 221 U. S. 106, 188; 55 L. Ed. 663, 697, where in discussing the decree that should be entered, the Supreme Court spoke of a disintegration of the several connected corporate businesses, and pointed out that it might be necessary

"by way of an injunction restraining the movement of the products of the combination into channels of interstate or foreign commerce, or by the appointment of a receiver, to give effect to the requirements of the statute."

What is here involved is that which is specifically authorized to be enjoined by the acts of Congress. The Sherman antitrust law, section 2, makes guilty.

"every person who shall monopolize or attempt to monopolize."

279 Section 4 of the same statute authorizes injunctions

"to prevent and restrain violations of this act."

Attempts may be prevented before they become successful.

When there is considered the allegations of the original bill filed in this cause, the findings by the Federal Trade Commission, the facts set out in the intervention filed by the American Wholesale Grocers' Association, and the facts stated in the committee's report on Senate Resolution 211, referred to on the hearing of this petition,

t is clearly shown that there was an attempt to monopolize, if not ctual monopoly of the distribution of food products, by the defend-nts in this case.

In the Clayton law, section 3, there is further authority to seize im who attempts to violate the law and stop him before his attempt s successful. Section 3 of the Clayton law in so far as it is here pplicable, reads:

"That it shall be unlawful for any person engaged in commerce, in he course of such commerce, to * * * make a sale or contract for sale of goods, * * * for use, consumption, or resale within he United States or any Territory thereof or in the District of Columbia * * * where the effect of such * * * sale, or contract for sale * * * may be to * * * tend to create a monopoly in any line of commerce."

What this court did in the decree of February 27, 1920, and what your honor here presiding did in your opinion of October 16, 1922, was merely to enforce the provisions of the antitrust laws, and the same rulings would have been appropriate with the proof indicated in the documents aforesaid had the decree been entered after hearing instead of by consent.

It certainly does not weaken a decree that the defendants consented to its entry. If the allegations and the findings of the Federal Trade Commission are true, then even though defendants had contested the entry of any decree, it would have been right and proper to have entered the decree of February 27, 1920. All the court did here was to stop before it became fully successful the attempt to create a most dangerous monopoly; and the defendants, by agreeing to limit their business to that which was legitimately within the scope of their respective enterprises, were as stated by the court in Oliver vs. Gilmore, 52 Fed. Rep. 562, 567, adapting their businesses to

"the line of the modern division of labor" with the result, as further stated by the court, to

"prove of advantage to the community."

6

For answer to paragraph 6 of said petition for rehearing, interveners hereinbefore named deny the same and say that the
280 Attorney General, under statutes hereinbefore copied, had authority and it was his duty to stop the defendants from their attempted monopoly of the food products of the country; that if it were necessary, as the allegations showed it was, that there should be a division of labor and a discontinuance by defendants of some parts of their business in order fully to enforce the law and effectuate the object of the Attorney General to prevent this attempt at monopoly, the courts have full authority to act.

These interveners further say that the injunction decreed herein was not a contract requiring defendants to abandon a lawful business, but was an injunction compelling the defendants to cease from a busi-

ness, the continuance of which tended to create a monopoly and to restrain interestate trade.

Selling groceries is per se lawful. So is "peaceable persuasion" by labor organizations. But either selling groceries or peaceable persuasion may be part of an illegal scheme, and thus a proper subject for an injunction.

In Duplex Printing Press Co. v. Deering et al., 254 U. S. 443, 465, 41 Sup. Ct. 172, 176, 65 L. Ed. 349, 16 A. L. R. 196, the court defines the conspiracy which is prohibited and which may be enjoined, as follows:

"The accepted definition of a conspiracy is: 'A combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means' * * * If the purpose be unlawful, it may not be carried out, even by means that otherwise would be legal; and, although the purpose be lawful, it may not be carried out by criminal or unlawful means."

After discussing other decisions, the court further in the Duplex Printing Case said:

"It is settled by these decisions that such a restraint produced by peaceable persuasion is as much within the prohibition as one accomplished by force or threats of force, and it is not to be justified by the fact that the participants in the combination or conspiracy may have some object beneficial to themselves or their associates which possibly they might have been at liberty to pursue in the absence of the statute."

7

Answering paragraph 7 of said petition for rehearing, interveners hereinbefore named deny the same and say that this court had full jurisdiction, power, and authority to enjoin the defendants as they were enjoined in the decree of February 27, 1920; that the courts are not compelled to wait until a monopoly has been fully established and restraints of trade have been made effective, before preventing same, but it is the duty of the court, as was done in this case, to enjoin those attempts, the completion of which would effectuate monopolies and restraints of trade.

281. Referring specifically to the cases cited in the petition for review in paragraph 7 thereof, these interveners respectfully submit:

The case of Swift & Company vs. United States, 196 U. S. 375, 49 L. Ed. 518, itself furnishes justification for the decree in this case. Referring to the pages of the official edition, it will be seen that among the charges made in the Swift case, as in this case, was the charge that the railroads were giving preference to the packers (page 394). It was charged in the Swift case and is charged here, and is true, that the defendants in that case and in this case were conspiring to monopolize the distribution of certain named commodities (page 395).

In speaking of the rules of pleading, Mr. Justice Holmes denied the contention that a bill in equity should be as specific as an indictment, and referring to a bill in equity, said:

"But it is to be taken to mean what it fairly conveys to a dispassionate reader by a fairly exact use of English speech" (page 395).

And referring to the general scheme, Mr. Justice Holmes further said:

"The scheme alleged is so vast that it presents a new problem in pleading * * * The elements, too, are so numerous and shifting, even the constituent parts alleged are, and from their nature must be, so extensive in time and space that something of the same impossibility applies to them" (pages 395, 396).

Further, Mr. Justice Holmes:

"It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful."

And further:

"But when that intent and the consequent dangerous probability exist, this statute, like many others, and like the common law in some cases, directs itself against that dangerous probability as well as against the completed result."

The reading of the Swift case shows the necessity for such an injunction as was rendered in this case.

The canneries also cited the case of New York, New Haven & Hartford Railroad Company vs. Interstate Commerce Commission, 200 U. S. 361, 50 L. Ed. 515, which has no application whatever to the facts here. That case dealt with an alleged violation of the acts to regulate commerce, and in substance holds that an injunction could not merely prevent general violations of law, but must refer to specific violations. Here the decree specifically mentions the things that are enjoined.

The case cited by the Canneries of United States v. Agler, 62 Fed. 824, supports the decree in this case. In the Agler case it was claimed that the injunction was void because the bill was demurrable. District Judge Baker discussed the right of the United States to
282 obtain an injunction prior to the Sherman Act, and said that one of the purposes of the Sherman Act was the "checking and arresting of all lawless interference," and that it applied to capitalists, monopolists, and laborers. And the learned judge, in language appropriate, here said:

"It is a praiseworthy purpose, in the midst of tumult and excitement, when lawlessness seizes upon the arteries of the commerce of the Nation, for the courts of the land, in their peaceable and orderly way, to lay their hands on these men, and bid them cease. It is a lawful thing—a commendable thing. The law gives them that power."

The other two cases cited by the canneries and the text from the Ruling Case Law have no application to the facts of this case. Peti-

tioners forget, or at least disregard, the fact that the defendants in this case, the only parties who may complain of the decree, have consented to the decree. The canneries ostentatiously ignore the law with relation to consent decrees.

In 23 Cyc. 729 there appears a short statement buttressed by ample authority of the applicable rule. The statement follows:

"A judgment by consent operates as a waiver of any defects in the process or pleadings, or irregularities in the previous proceedings, or grounds of objection which would have constituted errors in the judgment if rendered upon trial, provided they do not go to the jurisdiction."

Ruling Case Law, vol. 10, sec. 347, states the rule in similar language:

"Decrees are frequently entered on consent of the parties, and this fact should be recited. Such a decree, when entered, is binding on the consenting parties, and it can not be heard or reviewed except on a showing that consent was obtained by fraud or that the decree was based on mutual error."

Citing Adler vs. Van Kirk Land, etc., Co., 114 Ala. 551, 21 So. 490, 62 A. S. R. 133.

Daniell's Chan. Plead. & Prac., 4th Ed., vol. 2, pp. 973, 974, says:

"It may be mentioned, with reference to the subject of consent causes, that a decree or order, made by consent of the counsel for the parties, can not be set aside, either by rehearing or appeal, or by bill of review; unless by clerical error anything has been inserted in the order, as by consent, to which the party had not consented; in which case a bill of review might lie."

An interesting application of these rules was made in United States Construction Co. vs. Armour Packing Co., 35 Ok. 179, 128 Pac. 371, where it was said:

"There is one principle of law which conclusively determines this case, and that principle is that a court has no power, after
283 stipulation for settlement, agreed to and signed by all the parties in interest, has been filed, and after judgment has been entered in accordance with such stipulation, to vacate and set aside or modify the judgment after the term at which it was rendered, in the absence of fraud between the parties agreeing to settlement by consent or stipulation, except for mistake, neglect, or omission of the clerk. In Morris vs. Peyton, 29 W. Va. 201, 11 S. E. 954, Mr. Justice Green, speaking for the court on the question of whether the court has power to vacate a decree entered by consent of the parties to the action, said:

"'As such a decree is not the judgment of the court upon the merits of the case, but the act of the parties to the suit, it is obvious that it cannot be modified, set aside, or annulled by any order in the cause made by the court below without the consent of all parties to the cause. * * * Nor could it be appealed from, nor modified by this court, unless, perhaps, it should be so entirely foreign to the

matters in controversy in the cause that for this or some other reason the court below had no jurisdiction or authority to enter such decree by consent or otherwise.'

"* * * The judgment in this case was a final ascertainment of the rights by consent of the parties to the suit, and cannot be changed by any subsequent order of the court without like consent. Seiler vs. Union Mfg. Co., 50 W. Va. 208, * * *. In the absence of fraud in its procurement, and between parties sui juris, who are competent to make the consent, not standing in confidential relations to each other, a judgment or decree of a court having jurisdiction of the subject-matter, rendered by consent of parties, though without any ascertainment by the court of the truth of the facts averred, is according to the great weight of American authority as binding and conclusive between the parties and their privies as if the suit had been and adversary one; and the conclusions embodied in the decree had been rendered upon controverted issues of fact and a due consideration thereof by the court."

The validity and force of a consent decree are shown in Nashville, etc., R. Co. vs. United States, 113 U. S. 261, 266, 28 L. Ed. 971, 973, where it was said:

"But the insurmountable difficulty is that the former decree appears upon its face to have been rendered by consent of the parties, and could not therefore be reversed, even on appeal. Courts of chancery generally hold that from a decree by consent no appeal lies, 2 Dan. ch. pr. ch. 32, sec. 1; French vs. Shotwell, 5 Johns. Ch. 555; Winchester vs. Winchester, 121 Mass. 127. Although that rule has not prevailed in this court under the terms of the acts of Congress regulating its appellate jurisdiction, yet a decree which appears by the record to have been rendered by consent is always affirmed, without considering the merits of the cause. A fortiori, neither party can deny its effect as a bar of a subsequent suit on any claim included in the decree."

284 In Thompson vs. Maxwell Land Grant & R. Co., 168 U. S. 451, 463, 42 L. Ed. 539, 544, Mr. Justice Brewer said:

"The case falls within the general rule that a decree made by consent of counsel, without fraud or collusion, cannot be set aside by rehearing, appeal, or review. Webb vs. Webb, 3 Swanst. 658; Harrison vs. Rumsey, 2 Ves. Sr. 488; Bradish vs. Gee, 1 Ambl. 229; S. C. 1 Kenyon, K. B. 73; Downing vs. Cage, 1 Eq. Cas. Abr. 165; Toder vs. Sansam, 1 Bro. P. C. 468; French vs. Shotwell, 5 Johns. Ch. 555.

No better discussion of the force and validity of consent decrees can be found than that shown in Adler vs. Van Kirk Land, etc., Co., 114 Ala. 551, 21 So. 490, 62 Am. St. Rep. 133, where the court said:

"It is averred in the bill that the decree in the foreclosure suit was 'solely upon the consent of the parties to said cause, and that no judicial ascertainment of the facts stated in the bill filed in said cause was ever had'; and that 'said consent decree does not and did

not constitute an adjudication of said cause.' The purpose of the pleader in making this averment was, doubtless, to state as a fact that the decree was merely a consent decree, a decree agreed upon by the parties, and upon such consent rendered by the court, without the ascertainment of the truth of the facts averred in the bill, or of the rights of the parties therein asserted; and, as a conclusion of law flowing from these facts, that the decree does not operate an adjudication against the land and construction company of the matters embraced in the lis pendens of the foreclosure suit; and the argument is that the decree is not an estoppel of record against the company as to the amount by the decree declared to be owing upon the demands secured by the mortgage.

"Whatever effect such a conclusion, if logically deducible from the premises stated, would have upon the rights of the parties in this cause, under the averments contained in the bill it is not necessary to consider; and this because the conclusion is a non sequtur. In the absence of fraud in its procurement, and between parties sui juris, who are competent to make the consent not standing in confidential relations to each other, a judgment or decree of a court having jurisdiction of the subject matter, rendered by consent of parties, though without any ascertainment by the court of the truth of the facts averred, is, according to the great weight of American authority, as binding and conclusive between the parties and their privies as if the suit had been an adversary one, and the conclusions embodied in the decree had been rendered upon controverted issues of fact and a due consideration thereof by the court; Freeman on Judgments, sec. 705; Gifford vs. Thorn, 9 N. J. Eq. 722; French vs. Shotwell, 5 Johns. Ch. 568; Walsh vs. Walsh, 116 Mass. 383; 17 Am. Rep. 162; Dunman vs. Hartwell, 9 Tex. 495; 60 Am. Dec. 177; Nashville, etc., Ry. Co. vs. United States, 113 U. S. 261; Curry vs. Peebles, 83 Ala. 228; Rogers vs. Prattville Mfg. Co., 81 Ala. 483; 60 Am. Rep. 171; Patillo vs. Taylor, 83 Ala. 233.

285 "The fact that the decree in the foreclosure suit was rendered by consent of parties does not, therefore, detract from its dignity, or lessen its conclusiveness, as an adjudication between the parties. Not only is such its effect, but its consent is a waiver of error, precluding a review of the decree upon appeal and, as a general rule, upon a bill of review; Thompson vs. Maxwell, 95 U. S. 391; Nashville, etc. Ry. Co. vs. United States, 113 U. S. 266; 2 Daniell's Chancery, Pleading and Practice, 5th Am. Ed. 1576; Dunman vs. Hartwell, 9 Tex. 495; 60 Am. Dec. 176; Curry vs. Peebles, 83 Ala. 227."

To the same effect see Short vs. Taylor, 137 Mo. 517, 59 Am. St. Rep. 508.

Courts of equity have plenary powers to make such decrees as are required to meet the situation presented.

Mr. Justice Story in his work on Equity Pleading, after speaking of the limits of the powers of courts of law, said:

"But courts of equity are not so restrained. Although they have prescribed forms of proceeding, the latter are flexible, and may be suited to the different postures of cases. They may adjust their decrees so as to meet most, if not all, of these exigencies; and they may vary, qualify, restrain, and model the remedy so as to suit it to mutual and adverse claims, controlling equities and the real and substantial rights of all the parties. * * * So that one of the most striking and distinctive features of courts of equity is that they can adapt their decrees to all the varieties of circumstances which may arise, and adjust them to all the peculiar rights of all the parties in interest."

Broad decrees are necessary in these antitrust suits. The defendants here have been sued many times and several injunctive decrees have been entered against them. These were ineffective and so the agreement to the decree of February 27, 1920, was asked and defendants accepted the offered decree. The decree does prohibit the doing of a business ordinarily lawful, but if it is necessary to prevent the business in order to keep the defendants within the law, the business should be stopped. Certainly the subject matter of the original bill was broad enough to justify a court, even without any agreement, in entering such a decree as was needed to prevent the practices described in the bill. Decrees may prevent "doing specific things" and courts are not powerless to enforce the act (antitrust) or to suppress the illegal combination, and powerless to protect the rights of the public as against that combination. Northern Securities Co. vs. United States, 193 U. S. 197. See also Standard Oil Co. vs. United States, 221 U. S. 1, 77, 78; United States vs. American Tobacco Co., 221 U. S. 106; Gompers vs. Buck Stove & Range Co., 221 U. S. 418, 438; United States vs. Union Pacific R. R. Co., 226 U. S. 470, 474. See also United States vs. Railway Employees, 283 Fed. 479, where it was held:

"Rights guaranteed by the Constitution are not so absolute that they may be exercised under all circumstances, and without
286 any qualification, but, like other rights, must always be exercised with reasonable regard for the conflicting rights of others.

"Where peaceable and lawful acts in the conduct of a strike of railway employees are so interwoven with the whole plan of intimidation and obstruction that to enjoin only assaults and other acts of violence, leaving defendants free to pursue the open and ostensibly peaceful part of their program would be an idle ceremony, such acts will likewise be enjoined."

8

Answering paragraph 8 of the petition for rehearing of the California Cooperative Canneries the interveners herein named admit that jurisdictional allegations should appear of record, but say that, when the jurisdictional allegations appear of record, there is no re-

quirement of law that facts supporting the allegations shall be also of record, and it is within the right of the defendants in a named case, of which the court has jurisdiction, to consent to a decree without admitting the truth of the allegations.

And these interveners further show that this court had full jurisdiction of the subject matter of the suit and of the parties; and the parties, the only ones directly affected by the judgment, consented to the decree herein, thus making unnecessary the introduction of any evidence or the recital of any facts found.

The canneries, in paragraph 8 of their petition for rehearing, cite the cases of Terral vs. Burke Construction Co., 257 U. S. 529, and Iowa vs. Illinois, 147 U. S. 1. These cases deal with the old equity rule that permitted a plaintiff to set down a case on bill and answer. It is true that the rule was that when a case was set down on bill and answer, only the averments of the bill not denied by the answer were accepted as true. But the case here was not set down on the bill and answer. A decree was entered by consent, and the cases cited have no application whatever to any issue now pending before this court.

9

Answering paragraph 9 of the petition for rehearing in this case, interveners aforesaid admit that Federal Courts, are courts of statutory jurisdiction, and admit that the allegations of the pleadings should show jurisdiction of the subject matter; but these interveners aver that when, as in this case, jurisdiction is shown by the bill of complaint, the exercise of authority by the court can only be controlled by authorized proceedings to set aside what has been done; that, a final decree having been entered in this cause and no appeal therefrom having been taken, this court now can not review the manner of exercising the authority which was exercised in the entry of the decree of February 27, 1920.

The petitioner for review in paragraph 9 of said petition makes numerous citations of cases and texts. These, and similar ones elsewhere in the motion, appear formidable, but they are formi-
278 dable only in volume. Speaking generally they establish principles disputed by no one and wholly irrelevant to any legal issue here, or they are merely irrelevant.

Occasionally, however, as might be expected where so many cases are copied from an undigested digest, some relevant principles are found, and these in no case support the theory of the petitioners for rehearing and in many cases support the conclusions of this court in denying that petition. The cases of Dred Scott vs. Sanford, 19 How. 393, 15 L. Ed. 691; Turner vs. Bank, 4 Dallas 11; Johnson vs. Ashton, 8 Peters 148; Ex parte Smith, 94 U. S. 456; Robison vs. Cease, 97 U. S. 648; are cited to establish the proposition that jurisdiction is not presumed in the Federal Court and that "when a plaintiff sues in a court of the United States, it is necessary that he should show in his pleadings that the suit he brings is within the jurisdiction of the court, and that he is entitled to sue there."

The above quotation, taken from the bottom of page 401 and top of page 402 of the official opinion in the Dred Scott case, unquestionably states the law, and the other cases just cited follow in the announcement of a similar principle.

But the principle has no application here. In this case the statutes of the United States specifically and definitely give jurisdiction to this court in this kind of a case, and there can be no question of jurisdiction. There was no denial of the jurisdiction of the court and no plea thereto. And further in the Dred Scott case the Supreme Court, at page 402, said:

"If, however, the fact of citizenship is averred in the declaration, and the defendant does not deny it and put it in issue by plea in abatement, he can not offer evidence at the trial to disprove it, and consequently cannot avail himself of the objection in the Appellate Court unless the defect should be apparent in some other part of the record."

And further said the court:

"The undisputed averment of citizenship in the declaration must be taken in this court to be true."

Petitioner for rehearing having established what no one denies, that the jurisdiction must appear on the face of the pleadings, then proceeds to copy a long list of cases and to make reference to certain sections of Corpus Juris and other textbooks. Evidently the compiler of the motion for rehearing did not stop carefully to read the cases and texts cited. It may be helpful to the court to make reference to what was decided in these cases and what was stated by these texts.

The Constitution of the United States is cited, showing where is vested the judicial power of the United States. And then the case of Muskrat vs. United States, 219 U. S. 346, 55 L. Ed. 246, is cited. This case merely holds what no one disputes, that there must be a cause for controversy before the court has jurisdiction, and
288 that the constitutionality of a statute can not be submitted to the court for consideration unless the question arises in a justiciable controversy. (See page 361 of the official opinion.)

The next case, Fairchild vs. Hughes, decided by the Supreme Court of the United States February 27, 1922, 66 L. Ed. advance sheets 260, merely announces the same principle as that stated in Muskrat vs. United States.

In the next case, Windsor vs. McVeigh, 93 U. S. 274, 23 L. Ed. 914, the Supreme Court at page 283 of the official edition quotes from the case of Cornell vs. Williams, 20 Wallace 250 as follows:

"'The jurisdiction,' says the justice, 'having attached in the case, everything done within the power of that jurisdiction, when collaterally questioned, is held conclusive of the rights of the parties, unless impeached for fraud.'"

McGuire vs. Conwine, 101 U. S. 108, 25 L. Ed. 899, announces a similar general principle and one equally inapplicable to any issue here.

The next case cited in the petition for rehearing is that of Reynolds vs. Stockton, 140 U. S. 254, 35 L. Ed. 464. At page 271 of the official opinion the principle of that case is shown in words as follows:

"In other words, that when a complaint tenders one cause of action, and in that suit service on, or appearance of, the defendant is made, a subsequent judgment therein, rendered in the absence of the defendant, upon another and different cause of action than that stated in the complaint, is without binding force."

The principle stated is good law but has no possible application to the facts now before the court.

United States vs. Trans-Missouri Freight Association, 58 Fed. 58, is the next cited. The principal purpose of this case seems to have been to show that, when a case is heard on the bill and answer, allegations of the bill denied in the answer are not taken as true, a proposition no one disputes, and which is not in conflict with what the Court did in this case. The case, however, was reversed on other points by the Supreme Court of the United States in 166 U. S. 290, 41 L. Ed. 1007.

Kreider vs. Cole, 149 Fed. 647, similarly is inapplicable to any issue in this case.

In People's Bank vs. Gibson, 161 Fed. 286, next cited by petitioner for rehearing herein, the court announced a principle directly in conflict with what the Canneries is herein contending for. The court there said:

"When a case is set down for hearing on bill and answer, all the facts well pleaded in the answer are taken as true, whether responsive to the bill or not (Perkins vs. Nichols, 11 Allen (Mass.) 542; American Carpet Lining Co. v. Chipman, 146 Mass. 385, 16 L. Ed. 425);
but, where it is set down for hearing on bill, answer, and repli-
289 cation only those averments of the answer which are responsive to the bill are taken as true. All allegations therein in avoidance or justification are denied by the replication and are taken as untrue. Van Dyke v. Van Dyke, 26 N. J. Eq. 180, 181; Story's Equity Pleading (10th ed.) p. 418, note 3."

Under the new rules of equity replications are not required to be filed, and the case stands as though a replication had been filed (Equity Rule 40 of this court), so there is nothing helpful to the petitioner for rehearing in this case.

The seven cases cited next by petitioner from various State courts are along lines similar to those herein referred to, and the same can be said of the textbooks.

Petitioner for rehearing then cites Corpus Juris and refers to several pages of both volumes 15 and 21. The references are to statements of well-known principles, none of which has been violated by what has heretofore taken place in this case, and they generally support what has been here adjudicated by refusing to permit the intervention of the canneries.

Fairly representative of the principles set out in volume 15 of Corpus Juris, we quote from pages 729 and 730, as follows:

"Since jurisdiction is the power to hear and determine, it does not depend either upon the regularity of the exercise of that power, or upon the correctness or rightfulness of the decision made, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly, subject to the qualification that the court can render only such judgment as does not transcend in extent or character the law which is applicable to that class of cases."

The principles stated in the quotation above are supported by notes of decisions of the Federal and many State courts and are applicable here. This court had jurisdiction of the subject matter, and whether or not it erred in entering a judgment is a question that cannot now be raised.

Fairly illustrative of the references to 21 Corpus Juris and applicable to the situation here, we quote from the text, pp. 169 and 170, as follows:

"If there is not manifestly an entire lack of equity jurisdiction, the court will leave the jurisdiction where the parties, by their acquiescence, have placed it. In such case the objection must be raised at the proper time and in the proper manner, or else it is waived. In other words, where a case is presented within the general field of equity jurisdiction, any feature which might lead the court to decline jurisdiction or to relegate the party to law in the particular case must be seasonably presented or the party will be deemed to have submitted to an adjudication in equity."

In support of this text Corpus Juris cites more than a page of cases from State and Federal courts. If these interveners
290 wished merely quantity and desired to give an adumbration of a large number of cases in support of the principles for which they contend, they would copy the title and place where are reported all of these cases.

One of the cases supporting the quotation above is so direct and so applicable that we can not refrain from quoting it. It is the case of McGowan vs. Parrish, 237 U. S. 285, 59 L. Ed. 955. At page 295 of the official edition the Supreme Court announced, through Mr. Justice Pitney, applicable and controlling principles here. The court said:

"The equity jurisdiction having thus been properly invoked, the right of defendant to object because of the alleged existence of a legal remedy could be waived. Reynes v. Dumont, 130 U. S. 354, 395, 32 L. Ed. 1005, 1008, 9 Sup. Ct. Rep. 594; Brown, B. & Co. v. Lake Superior Iron Co., 134 U. S. 530, 536, 33 L. Ed. 1021, 1025, 10 Sup. Ct. Rep. 604; Re Metropolitan R. Receivership (Re Reisenberg), 208 U. S. 90, 110, 52 L. Ed. 403, 412, 28 Sup. Ct. Rep.
219 • • •

"The consent decree not only amounted to a clear and express waiver of jurisdictional objections, but it rendered irrelevant, so far as the present parties are concerned, all questions as to the effect of the contracts in creating a lien upon the proceeds of the ice claim."

Petitioner concludes paragraph 9 of its petition for rehearing by citing 2 R. C. L. 31, section 9. The citation would appear to have been made for the purpose of showing a reason why the petition should not be granted. It is commendable of counsel to furnish the authorities to the court even if the authorities are against it. So applicable is this citation that we beg leave to quote it in full:

"A judgment or decree rendered by the consent of the parties is in the nature of a solemn contract and is in effect an admission by the parties that the decree is a just determination of their rights on the real facts of the case, had they been proved. As a result, such a decree or judgment is absolutely conclusive between the parties, and it can neither be amended nor in any way waived without a like consent, nor can it be appealed from or reviewed on a writ of error. Thus consent to the rendition of a decree in proceedings for the foreclosure of a mortgage is a waiver of error precluding a review on appeal."

The quotation above is supported by authority, and among the authorities is the case of Adler vs. Van Kirk Land & Construction Co., 114 Ala. 551, 21 Southern 490, 62 A. S. R. 133, relied on ante, page 13.

10

Answering the argument contained in paragraph 10 of the petition for rehearing filed by California Cooperative Canneries, the interveners hereinbefore named submit: Whether or not this court has authority to impose penalties in this case is not involved, as no penalty was imposed. The issue is whether or not the court had
291 jurisdiction of the subject matter in such way as to authorize it to act, and it is respectfully submitted that jurisdiction of the subject matter of the suit is specifically and definitely granted by the provisions of the antitrust laws, and that under such provisions this court had authority to enjoin monopoly and attempts at monopoly and to prevent, as well as to restrain acts in violation of or tending to violate the antitrust laws; that, under the allegations of the original bill in this case, defendants were guilty of monopoly, or of attempts to monopolize, and of restraints of trade, and that what the court did, and what it was its duty to do, was so to enjoin the defendants as to prevent the accomplishment and continuation of the illegal atempts and the illegal acts. "Intent and the consequent dangerous probability" (Swift case, ante 9) were prevented.

And in doing what was done in this case in the entry of the consent decree this court acted within its jurisdiction, power, and authority, and such decree is in every respect valid, and having been entered at a prior term of this court, and no appeal therefrom having been taken, errors, if any, of the court in entering such decree can not now be considered.

In referring to the long list of cases cited by the petitioner in paragraph 10 of its petition for review these interveners herein briefly analyze such cases: The first case cited, that of Windsor vs. McVeigh,

93 U. S. 274, 23 L. Ed. 914, merely announces the well-known, undisputed, and here irrelevant principle that a criminal sentence without hearing is improper. The next case, that of Campbell vs. Porter, 162 U. S. 478, 40 L. Ed. 1044, states that questions of jurisdiction may be raised by either party to the cause or by the court, a principle that we do not deny, but which has nothing to do with the case here.

Cooper vs. Reynolds, 10 Wall., 308, 19 L. Ed. 931, holds what we here contend, that mere error in the acts of the court, the court having jurisdiction of the subject matter, cannot now be availed of, even if the canneries was a party to the cause. The court, at page 316 of the official edition, said:

"Nor can it disregard that judgment or refuse to give it effect on any other ground than a want of jurisdiction in the court which rendered it.

"It is of no avail, therefore, to show that there are errors in that record unless they be such as prove that the court had no jurisdiction of the case or that the judgment rendered was beyond its power."

Nash vs. Williams, 22 Wall. 226, 22 L. Ed. 254, announces the principle for which these interveners contend in language as follows:

"The settled rule of law is that jurisdiction having attached in the original case, everything done within the power of that jurisdiction, when collaterally questioned, is to be held conclusive of the rights of the parties unless impeached for fraud. Every intendment is made to support the proceeding. It is regarded as if it were
292 regular in all things and irreversible for error. In the absence of fraud no question can be collaterally entertained as to anything lying within the jurisdictional sphere of the original case. Infinite confusion and mischiefs would ensue if the rule were otherwise."

In the United States vs. Walker, 109 U. S. 258, 27 L. Ed. 927, it is held that the court must not go beyond its jurisdictional power in entering judgments, a principle which we do not deny and which has no application here, because the court, even if it erred, had jurisdiction to enter an injunction order enjoining the commission of the offenses alleged to have been committed and threatened.

Re Sawyer, 144 U. S. 200, 34 L. Ed. 402, holds that jurisdiction of a court of equity, "unless enlarged by express statute," is limited. Here the jurisdiction of the court of equity has been enlarged by express statute.

In Ex parte Neilsen, 131 U. S. 176, 33 L. Ed. 118, the court held that a judgment of a court having no jurisdiction over the subject-matter was void, an elementary principle which no one denies.

In Ex parte Cuddy, 131 U. S. 280, 33 L. Ed. 154, the whole question of jurisdiction is elaborately discussed, and it is held that jurisdiction is presumed in the absence of something of record to the contrary, and that every intendment is made in support of the jurisdiction. The discussion, while somewhat lengthy, is so fundamental and so clearly establishes the contention of interveners here that it is

deemed proper to quote it at length. Mr. Justice Harlan, in the course of his able opinion in the case just cited, said:

"The district court possesses superior jurisdiction within the meaning of the familiar rule that the judgments of courts of that character cannot be assailed collaterally except upon grounds that impeach their jurisdiction. In Kempe's Lessee vs. Kennedy, 9 U. S. 5 Cranch, 173, 185 (3 L. Ed. 70), Chief Justice Marshall, after observing that the words 'inferior court' apply to courts of special and limited authority, erected on such principles that their proceedings must show jurisdiction, said: 'The courts of the United States are all of limited jurisdiction, and their proceedings are erroneous if the jurisdiction be not shown upon them. Judgments rendered in such cases may certainly be reversed, but this court is not prepared to say that they are absolute nullities, which may be totally disregarded.' In McCormick vs. Sullivant, 23 U. S. 10, Wheat. 192, 199 (6 L. Ed. 300), where the question was whether a decree in a suit in the Federal District Court of Ohio which did not show that the parties were citizens of different States was coram non judice and void, the court said that the reason assigned for holding that decree void 'proceeds upon an incorrect view of the character and jurisdiction of the inferior courts of the United States. They are all of limited jurisdiction; but they are not on that account inferior courts in the technical sense of those words, whose judgments, taken alone, are to be disregarded. If the jurisdiction be not alleged in the proceedings, their judgments and decrees are erroneous and may, upon a writ of error or appeal, be reversed for that cause. But they are not absolute nullities.' And in Galpin vs. Page, 85 U. S. 18
293 Wall. 350, 365 (21 L. Ed. 959, 962) the court said: 'It is undoubtedly true that a superior court of general jurisdiction, proceeding within the general scope of its powers, is presumed to act rightly. All intendments of law in such cases are in favor of its acts. It is presumed to have jurisdiction to give the judgments it renders until the contrary appears. And this presumption embraces jurisdiction not only of the cause or subject matter of the action in which the judgment is given, but of the parties also.' The general rule that, unless the contrary appears from the record, a cause is deemed to be without the jurisdiction of a circuit or district court of the United States—their jurisdiction being limited by the Constitution and acts of Congress—has no application where the judgments of such courts are attacked collaterally.

"Unless, therefore, the want of jurisdiction, as to subject matter or parties, appears, in some proper form, every intendment must be made in support of the judgment of a court of that character."

In United States vs. American Tobacco Company, 191 Fed. 371, at page 383 of the opinion, there is a discussion of the power of the court to enter particular injunctive provisions. We do not understand that discussion as being applicable to the general question of jurisdiction. But if it is, there is nothing said in the opinion contrary to the contentions of the interveners and plaintiff in this case

In Swift & Co. vs. United States, and Commission vs. Peaslee, 177 Mass. 267, cited supra, discussed in United States vs. United States Steel Corporation, 251 U. S., at page 465 of the opinion, it is shown that injunctions may prevent "the dangerous probability as well as the completed result" of a violalton of the antitrust statutes.

Kreider vs. Cole, 149 Fed. 647, merely states, what no one disputes, that questions of jurisdiction are fundamental. The various State cases to which reference is made in paragraph 10 of the petition for rehearing go no further than to hold generally that jurisdiction is fundamental, that it cannot be waived, and that courts without jurisdiction can not enter any kind of judgment. The fallacy of the argument of the petitioner for rehearing is that he erroneously assumes this court to be without jurisdiction. There is no basis for such an assumption. The court had jurisdiction by specific statutory provisions, and its action was consented to, and no effort to reverse the action was had during the term or by appeal. If these could be shown to be error in the decree of February 27, 1920, it could not now be remedied. Judgment has become final and conclusive.

The petitioner in seeking the review, in paragraph 10, also refers again to volume 15 of Corpus Juris. The principles, fundamental and elementary, that jurisdiction must exist to authorize action by a court, are supported by the citations from this text book. Not one of the citations conflicts with the action of his court in overruling the application of the California Cooperative Canneries to intervene herein. And not one of the principles cited shows or tends to
294 show that the judgment rendered in this case on February 27, 1920, is void. Briefly to sum up the discussion in Corpus Juris, the principles are:

"Jurisdiction of the subject matter is the power to hear and determine cases of the general class to which the proceedings in question belong, the power to deal with the general subject involved in the action, and, as used in the constitutions and statutes, the word 'jurisdiction' means jurisdiction as to subject matter only, unless an exception arises by reason of its employment in a broader sense. Such jurisdiction the court acquires by the act of its creation, and possess inherently by its constitution, and it is not dependent upon the sufficiency of the bill or complaint, or plaintiff's right to the relief demanded, the regularity of the proceedings, or the correctness of the decision rendered."

Of course jurisdiction must exist, and the lack of jurisdiction cannot be waived. But where the court has jurisdiction of the general subject matter, the right to decide questions comprehended in the general jurisdiction but not specially within the particular jurisdiction involved in the case may be waived, and in this class of cases, as said by Judge Purnell, "Consent confers jurisdiction." See Mitchell vs. Mitchell, 147 Fed. 280, citing Bardes vs. Bank, 178 U. S. 524, 44 L. Ed. 1175.

Answering paragraph 11 of the petition for rehearing filed herein, these intervenors do not dispute the proposition that the jurisdiction

of Federal courts is dependent upon Federal statutes, nor do these interveners insist that consent of parties will give jurisdiction over the subject matter. They do aver that consent of parties will give jurisdiction over persons and that, by the allegations of the original bill, in this cause this court had undisputed jurisdiction to render the decree of February 27, 1920. United States vs. Mayer, 235 U. S. 55, 70, 59, L. Ed. 129, 136.

And these interveners further say that the defendants to the original decree having agreed thereto, no other person can object to such an agreement, and that the term of this court at which said decree was entered having expired, this court now has neither authority nor jurisdiction to set aside said decree. United States vs. Mayer, supra.

Referring to the cases cited by interveners at the end of paragraph 11 and in paragraph 11 of their petition for review, these interveners say that except as hereinafter stated, they have already, in preceding parts of this answer, and objections, discussed such cases. To save the time of the court, and to render it such aid as possible, interveners will discuss those cases cited by the petitioner in paragraph 11 of its petition which have not already been discussed.

In Sevileta, etc., vs. Belen Lang Grant, 242 U. S. 595, 61 L. Ed. 514, the Supreme Court held that consent could not change a statute which prohibited the exercise of jurisdiction. Obviously such a holding does not affect the issues here.

In Harding vs. Harding, 198 U. S. 317, 49 L. Ed. 1066, there was involved a question of the validity of a decree made in a
295 separation suit between husband and wife, and the question was determinable under statutes of the State of Illinois. The particular question has nothing to do with this case, but the Supreme Court did state the general rule of law as to consent decrees, and that statement is applicable here. The statement reads:

"Thus, in Knobloch vs. Mueller, the court said (123 Ill. 565, 17 N. E. 699):

"'Decrees of courts of chancery, in respect of matters within their jurisdiction, are as binding and conclusive upon the parties and their privies as are judgments at law; and a decree by consent in an amicable suit has been held to have an additional claim to be considered final. Allison vs. Stark, 9 Ad. & El. 255. Decree so entered by consent cannot be reversed, set aside, or impeached by bill of review or bill in the nature of a bill of review, except for fraud, unless it be shown that the consent was not in fact given, or that something was inserted, as by consent, that was not consented to. 2 Dan. Ch. Pr. 1576; Maxwell Land Grant & R. Co., 95 U. S. 391, 540; Cronk v. Trumble, 66 Ill. 432; Haas v. Chicago Bldg. Soc., 80 Ill. 248; Atkinson v. Manks, 1 Cow. 693; Winchester v. Winchester, 121 Mass. 127; Allason v. Stark, 9 Ad. & El. 225; Alexander v. Ramsay, 5 Bell. App. 69. See also note to Duchess of Kingston's Case, 2 Smith, Lead. Cas. 826 et seq. It is the general doctrine that such a decree is not reversible upon an appeal or writ of error, or by bill of review for error. Armstrong v. Cooper, 11 Ill. 540.'"

Pittsburg C. & St. L. Ry. Co. vs. Ramsay, 22 Wall. 322, 22 L. Ed. 823, is an opinion stating the law as interveners herein contend, the opinion be ng sufficiently shown by the second headnote, which reads: "Consent of parties cannot give the courts of the United States jurisdiction, but the parties may admit the existence of facts which show jurisdiction, and the courts may act judicially upon such an admission."

In Marietta vs. Henderson, 121 Ga. 399, 49 S. E. 312, there had been a consent decree enjoining certain obstructions. Subsequently the Legislature of the State of Georgia authorized the particular obstructions so enjoined, and the court held that, the legislature having changed the law, the decree could be likewise changed. The principles are stated as follows:

"While a judgment is a contract of record, the agreement which law implies from such a contract is simply that the parties will stand to and abide what has been decreed in the case upon the law and the facts when involved or which could have been properly involved. • • • A new right had been acquired, which was not and could not have been involved in the controversy resulting in the judgment."

Another volume of Ruling Case Law, volume 7, is cited here. All this citation holds is that jurisdiction of the subject matter can-
296 not be granted by consent, but that jurisdiction of the person can be obtained by consent.

12

Answering paragraph 12 of the petition for rehearing herein, these interveners say that the opinion of this court denying the intervention of the petitioner is referred to for a correct statement of such opinion. And these interveners, further replying to said paragraph, say that the jurisdiction of this court was not obtained or granted by consent, but grew out of the allegations of the original bill, which allegations show jurisdiction in this court under the antitrust statutes.

Interveners do not again discuss c tations at the bottom of paragraph 12 of the petition, as these have already been discussed hereinabove.

13

Answering paragraph 13 of the petition for rehearing herein, these interveners say that, whatever right a court has to correct its error when it has exceeded its jurisdiction is immaterial here, as this court has not exceeded its jurisdiction and the cases cited and the argument made are equally irrelevant to any issue here.

14

Answering paragraph 14 of the petition for rehearing, these interveners deny the same and say that not one of the authorities cited sustains the statement contained in said paragraph 14.

15

Answering paragraph 15 of the petition for rehearing herein, these interveners deny the same and say that in truth and in fact the petitioner for review has no right whatsoever enforcible against Armour & Company, and that the original petition of intervention filed by petitioner shows on its face that petitioner is without any interest in the subject matter of the decree heretofore entered in this case.

These interveners further say that if the petitioner, the California Cooperative Canneries, ever did have any valid contract, which is denied, that its remedy, if any it has, is by suit at law and not by an intervention in a proceeding in equity.

The question was before the court in Consolidated Fuel Company vs. S. L. & S. W. Ry. Co., 250 Fed. 395, 398, 399, 162 C. C. A. 465, where it was said:

"We have been unable to find any authority that would allow a common carrier to go into a court of equity to obtain specific performance of such a contract as is involved in this action. To take jurisdiction in equity of the case made by the complaint would be to destroy all distinction between actions at law and in equity.
297 If we shall take jurisdiction in this case and specifically enforce a contract for the sale and delivery of coal, where could we stop? The next contract presented for us would be for the sale and delivery of engines, for the sale and delivery of railroad ties, for the sale and delivery of cars, or for the sale and delivery of a thousand other articles which go to make up the equipment of a railroad."

It will also be recalled that the contract which petitioner claims it has with Armour & Company fixes the prices such as "shall be the prices used by the California Packing Corporation." Such a provision would probably prevent petitioner from recovering, even at law. See Troy Laundry & Machinery Co. vs. Dolph, 138 U. S. 617, 34 L. Ed. 1083.

16

Answering paragraph 16 of the petition for rehearing herein, these interveners say that they deny the same, and respectfully show that said paragraph is but a reiteration of arguments theretofore made in the petition, and presents no new fact, or new contention, or new argument.

17

Answering paragraph 17 of the petition for rehearing herein, these interveners say that they deny the same, and respectfully show that there is no conflict in ruling between the ruling of Mr. Justice Stafford, permitting the American Wholesale Grocers' Association to intervene, and the ruling of Mr. Justice Bailey, denying the California Cooperative Canneries the right to intervene. The condition of the American Wholesale Grocers' Association and the wholesale

grocers named hereinbefore and other wholesale grocers' associations is different from that of the California Cooperative Canneries. The grocers and their associations seek only to maintain the decree of February 27, 1920, while the canneries seek to destroy that decree.

For convenience, and in order to show the distinction between the two applications for intervention, we quote the opinions on both interventions. Mr. Justice Stafford said:

"Without deciding that petitioners have an undeniable legal right to intervene, it is considered that upon the facts alleged in their petition it is fair and just that they should be allowed to intervene, not to take control of the plaintiff's side of the proceedings, but for the limited purpose stated in their petition; namely, to be heard in opposition to any modification of the decree that would deprive them of the protection now secured by it for the following reasons, when taken together:

1. The decree was in part, at least, the fruit of their own efforts.
2. They abandoned the pursuit of other remedies in reliance upon this decree.
3. The protection afforded them by this decree might have been secured in a proceeding in their own name and behalf.

298 4. The change suggested would leave them in an embarrassed position in now seeking to secure the same protection.

5. The decree ought not to be modified unless the court is convinced that the public interest requires it and the petitioners fairly represent a large and well-defined portion of the public, whose position will enable them and whose interest will prompt them to present to the court facts or reasons, which, among others, the court ought to hear and consider before allowing the decree to be changed.

This decision must not be understood as opening the door to all would-be interveners who may consider themselves interested in the decree or any change therein, but as strictly limited to the facts alleged in this petition, which are in law admitted by the motion to strike out."

Mr. Justice Bailey said:

"The California Cooperative Canneries has moved for leave to file an intervening petition in this cause, seeking to set aside or modify the consent decree heretofore entered. The interest claimed by the canneries in this suit is based upon a contract between it and one of the defendants, Armour and Company, under the terms of which the latter agreed to purchase from the canneries such products as Armour and Company might require for the period of ten years. The contract also contains a provision that in case of material interference by Government action Armour and Company might terminate the agreement upon sixty days' notice.

"The canneries claim that the consent decree entered is void as to it, for these reasons: That it is a consent decree based upon an agreement made between the Government and the defendants prior to the bringing of the suit, which provided that this suit should be

brought and this particular decree entered by consent; that in the decree the defendants maintain the truth of the allegations of their answers, which deny any wrongdoing on the part of the defendants, and that there was therefore not only no sufficient finding of facts to authorize the decree, but even an express refusal to admit such facts; and in addition that the whole proceedings were a fraud upon the court.

"None of the parties to the suit are before the court seeking to set aside the decree. It was entered on February 27, 1920, and pursuant to its provisions several of the defendants have disposed of large interests in what have been called 'unrelated commodities,' doubtless in some cases at considerable loss. **If the decree were set aside it would be impossible to restore the status quo:** Without going into the question of laches in the application for leave to intervene, for the petition sets up grounds which might be sufficient to avoid that defense, I think that the motion for leave to intervene should be overruled.

"Under the present equity rules, no recital of facts upon which the decree is based is necessary and the refusal of the defend-
299 ants to admit any violation of the law may well have been a precaution against the use of such admissions in a criminal prosecution, although the statute itself provides against such use. Parties may compromise their difference and a consent decree as between them is certainly of fully as binding force as a decree rendered after a full hearing on the facts. That such a decree is entered pursuant to an agreement made prior to the bringing of the suit does not in my opinion render the decree less effective, where the court has not been, by any deception as to the facts, induced to enter a decree which may be injurious to third parties or in excess of the jurisdiction of the court.

"If the decree was entered into by Armour and Company solely for the purpose of preventing the fulfillment of legal obligations it might owe to the canneries under it, an action at law in the proper forum would afford relief.

"The motion for leave to intervene will be overruled."

(Bold type supplied in the foregoing opinions.)

An interesting discussion of this question, showing that not only is there no conflict of decision between the respective judges, but that same are in strict harmony, is found in the case of King vs. Barr, 262 Fed. 56, 59, and 60. The decision in King vs. Barr is so directly applicable here that we may be pardoned for quoting some of it. The opinion was of the circuit judges of the 9th District, and was written by Ross, circuit judge, who said:

"The contention made in the assignment of errors, and also in the brief of the appellant, that the court below was without any jurisdiction of the case, is obviously without any merit, first, because, if so, all of its proceedings were absolutely void, and consequently without effect upon the appellant; and, secondly, because it is

only in a valid pending proceeding in which any party is under any circumstances permitted to intervene." * * *

"* * * The final decree was entered at Boise, Idaho, February 15, 1918, and it appears from the affidavit of the petitioner's counsel that the petition for and the accompanying bill in intervention were not delivered to the clerk of the court for the judge until November 2nd of the same year, more than six months after the entry of the final decree establishing the rights of the respective parties to the suit, and long after the expiration of the term of the court during which the decree was entered. Nothing is better settled than that errors, if any, in a final judgment, can only be corrected by appeal, unless steps be taken in the trial court for that purpose during the term at which such judgment is rendered. Bronson v. Schulten, 104 U. S. 410, 415, 416, 26 L. Ed. 797, and cases there cited."

A concise and accurate description of a consent decree is given in 23 Cyc. 729 as follows:

300 "A judgment by consent of the parties is more than a mere contract in pais; having the sanction of the court and entered as its determination of the controversy, it has all the force and effect of any other judgment, being conclusive as an estoppel upon the parties and their privies."

No one can intervene in opposition to what has gone before in the action. This is a rule long and universally applied in courts of equity. The Supreme Court of the United States in prescribing equity rules recognized the principle and concluded equity rule 37 by providing that

"Intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding."

While such language is not used in equity rule 15 of this court, rule 15 not conflicting with but being less inclusive than equity rule 37 of the Supreme Court of the United States, this court will recognize rule 37.—Ryan v. McAdoo, 46 App. D. C. 117. See also Charleston Ry. Co. v. Pope, 122 Ga. 577, 579, where Judge, later Mr. Justice Lamar, held that

"An intervener took the suit as it found it."

The office of an intervention was stated in Seaboard Air Line Ry. v. Trust Co., 125 Ga. 463, 465, as follows:

"The office of an intervention is to cause a party to be made to a pending proceeding, not to establish that the proceeding should not exist."

Intervention to be made a defendant for the purpose of opposing the proceedings is not permissible in equity.

In Consolidated Gas Co. v. Newton, 256 Fed. 238, 244, it was said:

"The long-settled practice in equity is that a person can not be made a party defendant on his own application, unless so required by statute. Toler v. East Tennessee, V. & G. Ry. Co. (C. C.), 67 Fed. 168, per Lurton, J., afterwards a Justice of the Supreme Court;

Coleman v. Martin, 6 Blatchf. 119, Fed. Cas. No. 2985; Drake v. Goodridge, 6 Blatch. 151, Fed. Cas. No. 4062; Gregory v. Pike, 67 Fed. 837, 15 C. C. A. 33."

Adler vs. Seaman, decided by the 8th Circuit Court of Appeals, 266 Fed. 828, 841, holds:

"If they intervene, they can not challenge the propriety of the main litigations, but must accept it. Equity Rule 37, Jennings v. Smith (D. C.), 242 Fed. 561, 564; Seaboard Air Line Rwy. v. Trust Co., 125 Ga. 463, 465, 54 S. E. 138; Charleston, etc., Ry. v. Pope, 122 Ga. 577, 50 S. E. 374."

301 18

Answering paragraph 18 of the petition for rehearing herein, these petitioners deny the same.

Wherefore, having fully answered, and having shown the inapplicability of the cases and texts cited by the petitioner for rehearing, and having shown the propriety of the opinion and judgment of this Court denying the California Cooperative Canneries the right to intervene herein, these interveners pray that the petition for rehearing be denied, and that a decree to that end be entered.

AMERICAN WHOLESALE GROCERS' ASSOCIATION,
HENRY G. SEARS COMPANY,
JOHN HOFFMAN & SONS COMPANY,
MASON EHRMAN & COMPANY,
J. M. RADFORD GROCERY COMPANY,
SOUTHERN DISTRIBUTING COMPANY,
HALL GROCERY COMPANY,
ALBERT MACKIE & COMPANY, LTD.,
THE HICKS COMPANY,
W. D. CLEVELAND & SONS,
RAPHAEL GROCERY COMPANY,
OLIVER FINNIE GROCERY COMPANY,
By EDGAR WATKINS, *Attorney.*

In Supreme Court of District of Columbia

Notice of submission and acknowledgments

Filed February 5, 1923

* * * * * * *

Honorable HARRY M. DAUGHERTY,
Attorney General of the United States, Washington, D. C.

Please take notice that the annexed petition of the California Cooperative Canneries will be submitted Friday, January 19, 1923, to Justice Jennings Bailey, Supreme Court of the District of Columbia, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

FRANK J. HOGAN,
Attorney for Petitioner.

Service is hereby acknowledged of a copy of petition of the California Cooperative Canneries for rehearing, together with notice of time of submission of the said petition, this 12th day of January, 1923.

HERMAN J. GALLOWAY,
Special Asst. to the Attorney General of the United States.

392 Honorable PEYTON GORDON,
United States Attorney for the District of Columbia,
Washington, D. C.

Please take notice that the annexed petition of the California Cooperative Canneries will be submitted Friday, January 19, 1923, to Justice Jennings Bailey, Supreme Court of the District of Columbia, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

FRANK HOGAN,
Attorney for Petitioner.

Service is hereby acknowledged of a copy of petition of the California Cooperative Canneries for rehearing, together with notice of time of submission of the said petition, this — day of January, 1923.

PEYTON GORDON,
United States Attorney for the District of Columbia.

HENRY VEEDER, Esquire,
Attorney for Swift & Company et al., Chicago, Illinois.

Please take notice that the annexed petition of the California Cooperative Canneries will be submitted Friday, January 19, 1923, to Justice Jennings Bailey, Supreme Court of the District of Columbia, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

FRANK J. HOGAN,
Attorney for Petitioner.

Service is hereby acknowledged of a copy of petition of the California Cooperative Canneries for rehearing, together with notice of time of submission of the said petition, this 18th day of January, 1923.

HENRY VEEDER,
Attorney for Swift & Company et al.

CONRAD SYME, Esquire,
Attorney for Armour & Company Group, Chicago, Illinois.

Please take notice that the annexed petition of the California Cooperative Canneries will be submitted Friday, January 19, 1923, to Justice Jennings Bailey, Supreme Court of the District of Columbia, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

FRANK J. HOGAN,
Attorney for Petitioner.

Service is hereby acknowledged of a copy of petition of the California Cooperative Canneries for rehearing, together with notice of time of submission of the said petition, this 30th day of January, 1923.

CONRAD H. SYME,
Attorney for Armour & Company Group.

303 M. W. BORDERS, Esquire,
Attorney for Morris & Company Group,
Chicago, Illinois.

Please take notice that the annexed petition of the California Cooperative Canneries will be submitted Friday, January 19, 1923, to Justice Jennings Bailey, Supreme Court of the District of Columbia, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

FRANK J. HOGAN,
Attorney for Petitioner.

Service is hereby acknowledged of a copy of petition of the California Cooperative Canneries for rehearing, together with notice of time of submission of the said petition, this 16" day of January, 1923.

M. W. BORDERS,
Attorney for Morris & Company Group.

J. P. LIGHTFOOT, Esquire,
Attorney for Wilson & Company,
Chicago, Illinois.

Please take notice that the annexed petition of the California Cooperative Canneries will be submitted Friday, January 19, 1923, to Justice Jennings Bailey, Supreme Court of the District of Columbia, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

FRANK J. HOGAN,
Attorney for Petitioner.

Service is hereby acknowledged of a copy of petition of the California Cooperative Canneries for rehearing, together with notice of time of submission of the said petition this — day of January, 1923.

JEWEL P. LIGHTFOOT,
Attorney for Wilson & Company Group.

THOMAS CREIGH, Esquire,
Attorney for Cudahy Packing Company Group,
Chicago, Illinois.

Please take notice that the annexed petition of the California Cooperative Canneries will be submitted Friday, January 19, 1923, to Justice Jennings Bailey, Supreme Court of the District of Columbia, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

FRANK J. HOGAN,
Attorney for Petitioner.

Service is hereby acknowledged of a copy of petition of the California Cooperative Canneries for rehearing, together with notice of time of submission of the said petition, this 12th day of January, 1923.

THOS. CREIGH,
Attorney for Cudahy Packing Company Group.

304 EDGAR WATKINS, Esquire,
Attorney for Interveners American Wholesale Grocers' Association et al., Atlanta, Georgia.

Please take notice that the annexed petition of the California Cooperative Canneries will be submitted Friday, January 19, 1923, to Justice Jennings Bailey, Supreme Court of the District of Columbia, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

FRANK J. HOGAN,
Attorney for Petitioner.

Service is hereby acknowledged of a copy of petition of the California Cooperative Canneries for rehearing, together with notice of time of submission of the said petition, this 15 day of January, 1923.

EDGAR WATKINS,
Attorney for Interveners, American Wholesale Grocers' Association et al.

H. W. VAN DYKE, Esquire,
Attorney for Intervener National Wholesale Grocers' Association, Washington, D. C.

Please take notice that the annexed petition of the California Cooperative Canneries will be submitted Friday, January 19, 1923, to Justice Jennings Bailey, Supreme Court of the District of Columbia, at 10 o'clock a. m., or as soon thereafter as counsel can be heard.

FRANK J. HOGAN,
Attorney for Petitioner.

Service is hereby acknowledged of a copy of petition of the California Cooperative Canneries for rehearing, together with notice of time of submission of the said petition, this 13th day of January, 1923.

H. W. VAN DYKE,
Attorney for Intervener,
National Wholesale Grocers' Association.

In Supreme Court of District of Columbia

Memorandum opinion

Filed May 1, 1923

* * * * * * *

I have carefully examined the petition for a rehearing filed by the California Cooperative Canneries in this case, and the arguments

presented are substantially the same as those presented at the former hearing. I see no reason to change the views I have already expressed in this matter, and the petition to rehear will therefore be denied.

JENNINGS BAILEY, *Justice.*

305 In Supreme Court of District of Columbia

Final decree

Filed May 8, 1923

* * * * * * *

This cause came on further to be heard on the petition of the California Cooperative Canneries for leave to intervene herein for the purpose of moving in favor of the vacation or modification of the decree of this court entered in the above entitled cause on the 27th day of February, 1920, on the consent of the parties, and praying that this court adjudge said decree to be vacated in its entirety or so to be modified as to allow the consenting defendants to resume their dealings in the so-called unrelated commodities or to allow them to use their distribution facilities for the purpose of moving same; and the said petition, verified April 17, 1922, together with the objection and verified answer thereto of the Southern (now American) Wholesale Grocers' Association; the objection and verified answer of the National Wholesale Grocers' Association; objections to the granting of said petition orally stated by the attorneys for the United States at the bar herein; the hearings entitled "Packers consent decree" before a subcommittee of the Committee on Agriculture and Forestry, United States Senate, pursuant to Senate Resolution No. 211, dated March 23, 1922, and April 21, 1922, comprising the hearings before interdepartmental committee appointed by the Attorney General to consider the modification of said consent decree; the statement of the defendant, Cudahy Packing Company, filed June 14, 1922, and the statement of the defendant, Morris & Company, filed June 14, 1922; the original bill and answer of the defendants and all prior pleadings and proceedings heretofore had herein; oral argument of counsel for the parties and for the intervening grocers' associations; the petition for reargument filed herein by the said California Cooperative Canneries, and the answers and objections thereto, having all been submitted to and considered by the court, it is, this 18 day of May, 1923,

Ordered, adjudged, and decreed that the petition of the California Cooperative Canneries for leave to intervene herein for the purposes set forth in the said petition be and the same is hereby denied; and that the petition for reargument herein be and the same is hereby also denied.

By the court:

JENNINGS BAILEY, *Justice.*

In Supreme Court of District of Columbia

Order allowing appeal

From the foregoing order the California Cooperative Canneries, by its attorneys, in open court this 18 day of May, 1923, duly notes an appeal to the Court of Appeals of the District of Columbia, which is allowed, and the undertaking for costs on such appeal is fixed in the sum of $100.00; it is stipulated by counsel at the bar that there
306 shall not be included in the record on appeal "the hearings entitled "Packers consent decree" before a subcommittee of the Committee on Agriculture and Forestry, United States Senate, pursuant to Senate Resolution No. 211, dated March 23, 1922, and April 21, 1922, comprising the hearings before interdepartmental committee appointed by the Attorney General to consider the modification of said consent decree," mentioned in the foregoing order, but that the printed documents of said hearings may be presented to the Court of Appeals, by any party to this cause, and may be referred to in that court and considered by it.

By the court:

JENNINGS BAILEY, *Justice.*

Consented to as to form:

PEYTON GORDON,
HERMAN J. GALLOWAY,
Special Asst. to Atty. Gen.,
Attorneys for the United States of America.
EDGAR WATKINS,
Attorney for American Wholesale Grocers Assn.
BEEDE, ABBOTT & MORGAN,
Attorneys for National Wholesale Grocers Assn.
FRANK J. HOGAN,
Attorney for California Cooperative Canneries.

Memorandum

June 1, 1923. Bond on appeal of California Cooperative Canneries, interveners, approved and filed.

In Supreme Court of District of Columbia

Assignment of errors

Filed July 13, 1923

* * * * * * *

The appellant California Cooperative Canneries assigns the following errors in the rulings of the court:

1. In refusing to permit appellant to intervene herein for the purposes set forth in its intervening petition.

2. In refusing to permit appellant to be heard as amicus curiæ.

3. In refusing to vacate in its entirety the consent decree of February 27, 1920.

4. In refusing so to modify the said decree as to allow the defendants to resume their dealing in the so-called unrelated commodities, as before the entry of the said decree.

5. In refusing so to modify the said decree as to allow the defendants to use their distribution facilities for the purpose of moving the unrelated commodities, either upon a commission basis or upon some other efficient basis.

6. In denying appellant any relief whatever in the premises.

FRANK J. HOGAN,
Counsel for Appellant.

307 In Supreme Court of District of Columbia

Designation of record on appeal of California Cooperative Canneries

Filed July 13, 1923

* * * * * * *

The clerk will please prepare the transcript of record on the appeal of the California Cooperative Canneries, including therein the following parts of the record:

1. Bill of complaint.
2. Answer of Swift & Company.
3. Answer of Armour & Company.
4. Answer of Morris & Company.
5. Answer of Wilson & Company.
6. Answer of Cudahy Packing Company.
7. Answer of Western Meat Company and others.
8. Answer of New England Dressed Meat & Wool Company and others.
9. Stipulation.
10. Decree enjoining defendants (M. 109, p. 270).
11. Petition of Southern Wholesale Grocers' Association and others to intervene.
12. Order granting petition (M. 114, p. 48).
13. Intervening petition of Southern Wholesale Grocers' Association and others.
14. Petition of National Wholesale Grocers' Association to intervene.
15. Motion of plaintiff to set aside order granting leave to Southern Wholesale Grocers' Association and others to intervene.
16. Amended petition of Southern Wholesale Grocers' Association, and affidavit.
17. Fiat granting leave to file amended petition.
18. Memorandum decision on motion to strike out intervening petition of Southern Wholesale Grocers' Association.
19. Order overruling motion to strike out intervening petition of Southern Wholesale Grocers' Association (M. 115, p. 77).

20. Order allowing intervening petition of National Wholesale Grocers' Association to be filed (M. 115, p. 77).
21. Intervening petition of National Wholesale Grocers' Association.
22. Motion and petition of California Cooperative Canneries for leave to intervene.
23. Objection by Southern Wholesale Grocers' Association and others to filing intervening petition of California Cooperative Canneries.
24. Answer of National Wholesale Grocers' Association in opposition to petition of California Cooperative Canneries to intervene, and exhibit.
25. Order substituting American Wholesale Grocers' Association for Southern Wholesale Grocers' Association (M. 117, p. 308).
308 26. Objection of Cudahy Packing Company to motion of California Cooperative Canneries for leave to intervene.
27. Acknowledgments (9) of service of motion of California Cooperative Canneries for leave to intervene.
28. Memorandum opinion overruling motion of California Cooperative Canneries to file intervening petition.
29. Petition of California Cooperative Canneries for rehearing.
30. Answer and objections of American Wholesale Grocers' Association to petition for rehearing.
31. Notices (9) and acknowledgments (9) of hearing of petition for rehearing.
32. Memorandum opinion of court denying petition for rehearing.
33. Final decree as to California Cooperative Canneries intervention, and appeal (M. 118, p. 86).
34. Memorandum as to approval and filing of bond on appeal of California Cooperative Canneries.
35. Assignment of errors on appeal of California Cooperative Canneries.
36. This designation of transcript of record.

FRANK J. HOGAN,
Counsel for Appellant.

[Certificate to foregoing transcript omitted in printing.]

309 In Court of Appeals of the District of Columbia

Minute entries

April 22, A. D. 1924

CALIFORNIA COOPERATIVE CANNERIES, APPELLANT
vs.
UNITED STATES OF AMERICA, SWIFT & COMPANY, ARMOUR & Company, et al. } No. 4071

The argument in the above-entitled cause was commenced by Mr. Frank J. Hogan, attorney for the appellant.

310 Wednesday, April 23, A. D. 1924

[Title omitted.]

The argument in the above cause was continued by Mr. Conrad H. Syme, attorney for the appellees, the Swift and Company and Armour and Company groups, and by Mr. Herman J. Galloway, attorney for the appellee, United States of America, and by Mr. William C. Breed, attorney for the National Wholesale Grocers' Association, and by Mr. Edgar Watkins, attorney for the American Wholesale Grocers' Association, and by Mr. Charles A. Douglas, attorney for the appellees, the Swift and Company and Armour & Company groups, and was concluded by Mr. Frank J. Hogan, attorney for the appellant.

On motion the appellees, United States of America, American Wholesale Grocers' Association and National Wholesale Grocers' Association are allowed ten days in which to file additional briefs, and the appellant, California Cooperative Canneries, and appellees, Swift & Company and Armour & Company groups, ten days to file reply brief.

311 In Court of Appeals of the District of Columbia

CALIFORNIA COOPERATIVE CANNERIES, APPELLANT v. UNITED STATES OF AMERICA, SWIFT & COMPANY, ARMOUR & Company, Morris & Company, Wilson & Company, Inc., The Cudahy Packing Company, Western Meat Company and others, New England Dressed Meat & Wool Company and others, American Wholesale Grocers' Association, National Wholesale Grocers' Association of the United States, appellees	No. 4071

Opinion

Filed June 2, 1924

Before VAN ORSDEL, Associate Justice, SMITH and BARNEY, Judges, United States Court of Customs Appeals.

Mr. Justice VAN ORSDEL delivered the opinion of the court:

VAN ORSDEL, Associate Justice: On February 27, 1920, the Attorney General of the United States filed a bill of complaint in the Supreme Court of the District of Columbia against what are commonly known as the "Big Five meat packers," designated in the following groups: The Swift group, the Armour group, the Morris group, the Cudahy group, and the Wilson group. On the same day the defendants filed their respective answers, also there was filed a stipulation for a consent decree which was entered in accordance with the stipulation.

The bill of complaint alleged violations of the antitrust laws by the defendants. The answers denied such violations. The decree contained the following statement: "The several defendants having accepted service of process and having appeared and filed answers to the petition, which answers are on file in the office of the clerk of this court; and the parties having this day entered into a stipulation in this action, which stipulation is on file in the office of the clerk of this court, and from which it appears, among other things, that while the defendants, and each of them, maintain the truth
312 of their answers and assert their innocence of any violation of law in fact or intent, they nevertheless, desiring to avoid every appearance of placing themselves in a position of antagonism to the Government, have consented and do consent to the making and entry of the decree now about to be entered without any findings of fact, upon condition that their consents to the entry of said decree shall not constitute or be considered an admission, and the rendition or entry of said decree, or the decree itself, shall not constitute or be considered an adjudication that the defendants or any of them have in fact violated any law of the United States."

The decree enjoins the defendants from conspiring or combining to restrain trade or commerce, or monopolizing, or attempting, through combination or conspiracy to monopolize trade or commerce. Defendants are enjoined from using their distributive facilities, including branch houses, route cars, auto trucks, etc., in the handling, dealing in, jobbing, or distribution of certain products unrelated to the meat packing industry and generally included in the wholesale grocery lines. These articles are classified in the decree as fresh canned dried or salted fish, fresh died or canned vegetables, except in combination with meats, fresh crushed dried evaporated or canned fruits, confectioneries, syrups, soda fountain supplies, molasses, honey, jams, jellies, and preserves, spices, sauces, condiments, relishes, coffee, tea, chocolate, cocoa, nuts, flour, sugar, rice, bread, wafers, crackers, biscuits, cereals, grain, grape juices, and 25 classes of manufactured products enumerated under the head of miscellaneous articles.

The defendants are further enjoined from manufacturing, dealing in, transporting, or distributing either in domestic or export trade, or owning any stock or interest in any corporation or firm engaged in manufacturing, dealing in, or distributing these unrelated commodities; from operating retain meat markets, except at their packing plants, and those maintained for the accommodation of their own employes, and from owning any capital stock or interest in
313 public cold storage warehouses, except cold storage plants at the stockyards where packing plants are conducted. Defendants are required to divest themselves of all ownership or interest in any public stockyard, market company, stockyard terminal railroad, market newspaper, cold-storage warehouses, retail meat markets, and to cease manufacturing or transporting the unrelated commodities except as common carriers; to discover to the Gov-

ernment fully, respecting the conduct of their affairs, as required under the decree, and to submit to the inspection of the Attorney General their books, records, correspondence, or other documents, in so far as the same refers to any alleged violation of any of the terms of the decree. The decree further provides that all sales, transfers, or disposition, respecting any of the matters enjoined by the decree, made by any of the defendants for a period of five months prior to the entry thereof, "shall be submitted by the defendants to the court for its investigation and determination as to whether the same were made in accordance with the spirit and purpose of this decree," in the same manner as if such transactions had occurred subsequently to the entry of the decree.

It then provides "that jurisdiction of this cause be, and is hereby, retained by this court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree, and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

It appears that subsequently the National Wholesale Grocers' Association, and the Southern Wholesale Grocers' Association applied for leave to intervene for the protection of their respective interests, and especially to be heard upon all hearings of any motions or proceedings seeking to change, weaken, or otherwise modify the consent decree. Leave to intervene was granted, without prejudice to prior proceedings, on the same date their intervening petitions were filed.

On April 19, 1922, appellant, California Cooperative Canneries, filed its petition for leave to intervene, and also to be
314 heard as amicus curiæ. The petition is based upon a contract between appellant, under its former name of Producers Warehouse Company, and Armour & Company, whereby Armour & Company contracted to purchase all of the California canned fruit required in its business, except what it purchased from the California Growers' Association under a separate contract with that association. The contract provided the place of delivery of the fruits, that the price to be paid should be based upon the prices used by the California Packing Corporation in confirming its sales to the trade generally, thus throwing itself in competition with the California Packing Corporation, as to its selling prices. The contract in detail sets out the manner of payment, discounts, labeling of goods, adjustment of controversies as to quantity and condition of products, quality and grade of goods, and then provides that "in case governmental action materially interferes with the performance of this contract by second party (Armour & Company), then and in that case it shall have the right to cancel and terminate this agreement by giving sixty days' written notice to first party (appellant company) of its intention so to do, and shall not be held liable for any loss resulting therefrom."

It is averred in the petition that after the entry of the decree Armour & Company notified appellant that it could not further keep the contract by reason of the decree, and declined to proceed further with the performance thereof. The petition sets out that under this contract, prior to the entry of the decree, Armour & Company purchased approximately 52 per cent of appellant's entire output of canned fruit, amounting to $4,000,000 per annum. It is alleged that through this method of dealing there was greater profit to the producer and smaller cost to the consumer, due to the superior system of distribution of fruit products possessed by Armour & Company. It is averred that the decree was passed without any notice whatever to appellant or opportunity to be heard in opposition thereto, and that as soon as appellant became cognizant of the entry of the decree, it actively endeavored in various ways and before various tribunals and officials, to secure a vacation or modification of the decree
515 in so far as it affects appellant's rights.

The petitioner assails the decree as void for want of jurisdiction or power apparent on the face of the record, and insists that its direct effect is to restrict and not to promote competition in the distribution of fruit commodities; that its whole effect is to create a monopoly in favor of the Wholesale Grocers' Associations, particularly the Southern and National Wholesale Grocers' Associations, and that the monopoly thus created is destructive of appellant's business, the business of farmers' organizations, the business of general stores, mail-order houses, cooperative buying by retailers, meat packers, and business houses conducting both wholesale and retail business.

Appellant, through its petition, moved to set aside the entire decree on the ground that the court had no jurisdiction of the cause, and had no jurisdiction to render the decree; and further moved the court to set aside and vacate the portions of the decree relating to the unrelated commodities, on the ground of lack of jurisdiction to render the decree with respect to such commodities, and on the further ground that the decree is economically unsound and unjust and in violation of the antitrust laws.

This appeal, both in brief of counsel and presentation at bar, has gone far beyond its scope. The Government is here strenuously upholding the validity of the consent decree. Counsel for the grocers' associations are here likewise contending for the validity of the decree. Counsel for the packers are here contending that the decree is a nullity. The Farmers' National Council and the Peoples' Reconstruction League are here by counsel opposing the right of appellant to intervene. Appellant is here not only claiming the right of intervention, but assailing the consent decree as totally void, and certainly in so far as it affects its interests.

The court in its order denying the right of appellant to intervene sustained the power of the court to enter the consent decree, notwithstanding the declaration of defendants, contained therein, of the

truth of the allegations of their answers, holding that as none of the parties to the suit were before the court attempting to set aside
316 the decree, the only question to be determined was the right of appellant to intervene; and that "if the decree was entered into by Armour & Company for the purpose of preventing the fulfillment of any legal obligations it might owe to the canneries under it, an action at law in the proper forum would afford relief."

Inasmuch as the validity of the consent decree was not questioned in the court below by any of the parties to the action, that question is not before us. The packers are in no position in this proceeding to assail its validity. They made no attempt in the court below, by bill of review or otherwise, to have corrected what they now assert to be errors in the original decree; hence there is no order from which to appeal. Their appearance, however may be stated as amicus curiae, and with no other effect. The mere statement of their lack of substantial foundation upon which to stand demonstrates the fallacy of their position.

The only order appealed from, and the one to which our attention is limited, is the refusal to grant appellant leave to intervene. What effect our ruling upon that question may have later, in the event we are called upon to determine the validity of the consent decree, it is unnecessary to consider at this time.

We think, in any event, the holding of the court to the effect that, if Armour & Company consented to the decree for the purpose of evading its legal obligations to the canneries company, an action at law would afford proper relief, is erroneous. If the decree was made for the purpose of enabling Armour & Company to avoid its contractual obligations with appellant, then the court was used as an instrument to perpetrate a fraud, and the decree would have no legal force. On the other hand, if we assume, as we must, that the decree was intended to restrain Armour & Company from doing the things therein enumerated, the effect thereof is to deprive the appellant of its rights under the contract without first giving it a day in court.

Coming to the main question, Equity Rule 15, of the Supreme Court of the District of Columbia, provides, among other things, that "anyone claiming an interest in the litigation may at any
317 time be permitted to assert his right by intervention." This rule, though somewhat broader than Federal Equity Rule 37, is not in conflict therewith, and responds to the power of the court to establish rules regulating pleading, practice, and procedure, as provided by act of Congress, April 19, 1920, 41 Stat. 555.

Appellant's petition, in its averments, discloses that its members have an interest in this suit similar to the general public; also an interest due to the effect which the consent decree has upon industry in which appellant company is engaged, as well as the interest growing out of the destruction of its contract due to Armour & Company consenting to the original decree. It is not clear without substantiating proof that appellant's petition for intervention would justify

the vacation of the consent decree, or merely its modification to the extent of permitting the distributive facilities of Armour & Company to be used for moving the unrelated commodities included in appellant's output.

It appears that on November 17, 1921, appellant petitioned the Attorney General for a modification of the consent decree in this cause, which resulted in the appointment of an interdepartmental committee of three persons, one selected by the Attorney General, one by the Secretary of Agriculture, and one by the Secretary of Commerce, to conduct a hearing as to the matters involved in appellant's petition. The report, which was approved by the Attorney General, declared the questions of so grave and far-reaching importance with respect to the unrelated commodities, and also affecting the entire decree, and of such vital interest to the public, that they should be decided by the court which entered the decree, and recommended that the application of appellant be presented in the first instance to the court which entered the original decree.

In view of this situation, it is clear that appellant should have been permitted to intervene. The discretion of the chancellor in permitting or refusing intervention is by no means absolute. If the party seeking intervention shows such an interest in the litigation as to involve the protection of valuable rights and is without remedy elsewhere, the court should not refuse leave to intervene. Gaines v. Clark, 51 App. D. C. 71.

318 In United States Trust Co. v. Chicago Terminal Tr. R. Co., 188 Fed. 292, the court concisely stated the rule as follows: "Applications for leave to intervene are of two kinds. In one the applicant has other means of redress open to him, and it is within the court's discretion to refuse to incumber the main cause with collateral inquiries. In the other the applicant's claim of right is such that he can never obtain relief unless it be granted him on intervention in the pending cause. In this latter class the right to intervene is absolute, and the rejection of the petition is a final adjudication and therefore appealable."

A case strongly in point is that of the United States v. Terminal Railroad Association, 236 U. S. 194. Suit was brought under the antitrust law and a decree entered against defendants. On appeal to the Supreme Court the cause was remanded to enforce the provisions of the Sherman Antitrust Law (224 U. S. 383). Modification of the original decree was sought in the court below to permit the Terminal Railroad Association to carry on, as ancillary to its principal business, a transportation business. Petitions of intervention were filed by a large number of parties asserting that they would suffer serious loss if the Terminal Association was forbidden to engage in transportation business. Modification of the decree was prayed so as to permit the Terminal Association, as an incident of its business, to carry on such transportation. The petitions of intervention were opposed by the United States, but were permitted by the court to be filed over the objection of the Government. The prayer for modifi-

cation in each instance was denied. When the case again reached the Supreme Court two of the intervening petitioners sought leave to be allowed to intervene to ask a modification of the decree to the extent of permitting the Terminal Association to engage in transportation business. On the right of intervention the court said: "The challenge by the United States of the right to hear the intervening petitioners is without merit, since even although the petitioners were not parties, they are entitled to be orginally heard concerning the settlement of the decree in so far as it might operate prejudicially to their rights." The court, overruling the motion of the
319 Government to dismiss the appeal, proceeded to consider the matters arising on the petitions of intervention.

When an equity court, in the exercise of its jurisdiction, makes a decree which, in determining the rights of the parties, enjoins one of them from carrying out a lawful contract with persons not parties to the suit, and gives effect to a cancellation clause of such contract, it is the duty of the court, if it retains jurisdiction of the case, as in this instance, to permit the intervention of the contracting party, who is not a party to the original suit and who is detrimentally affected by the decree, and to give him an opportunity to be heard.

As we have observed, without intervention appellant would be left remediless. Valuable contract rights have been stricken down without notice to appellant or an opportunity to be heard. It is a fundamental principle of our jurisprudence that before private rights may be affected by judicial decree the party in interest must have due notice and an opportunity to be heard. Upon the strict observance of this principle rests the security of the citizen in the enjoyment of life, liberty, and property; otherwise these rights could be divested without due process of law.

It is not clear on just what theory the court below should permit the grocers' associations to intervene and deny the right of intervention to appellant, as the interests of these parties seem to be diametrically opposed to each other. If the charge of appellant is true, that the wholesale grocers are using the decree against the packers to strengthen and build up a giant monopoly in their various and varied lines of business, there would seem to be demand for a searching inquiry as to whether or not the court is being used as an agency to restrain one monopoly and thereby promote, strengthen, and build up another. Clearly it is not the policy of the antitrust act to accomplish this result. Nor will the decree of the court below declaring the packers' combination illegal under the antitrust act be sustained if its effect is to safeguard one public interest by the destruction of another. United States v. Terminal Railroad Association, supra.

The decree is reversed, with costs against appellees, other
320 than the United States, and the cause remanded with mandate that the appellant be allowed to intervene and such further proceedings thereupon be had as are necessary to determine the issues raised by appellant's petition.

[File indorsement omitted.]

321 In Court of Appeals of the District of Columbia

June 2, 1924

* * * * * * *

Decree

June 2, 1924

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, reversed, with costs against appellees, other than the United States, and that this cause be, and the same is hereby, remanded to the said supreme court that the appellant be allowed to intervene and such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition.

Per Mr. Justice VAN ORSDEL.

JUNE 2, 1924.

Judges James F. Smith and Orion M. Barber, of the U. S. Court of Customs Appeals, sat with Mr. Justice Van Orsdell in this case.

322 In Court of Appeals of District of Columbia

Mandate

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the Justices of the Supreme Court of the District of Columbia, greeting:

Whereas lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between United States of America, petitioner, and Swift & Company, Armour and Company, Morris & Company, Wilson & Co., Inc., and the Cudahy Packing Company et al., d'fendants, Equity No. 37623, wherein the decree of the said Supreme Court entered in said cause on the 8th day of May, A. D. 1923, is in the following words, viz:

"This cause came on further to be heard on the petition of the California Cooperative Canneries for leave to intervene herein for the purpose of moving in favor of the vacation or modification of the decree of this court entered in the above-entitled cause on the 27th day of February, 1920, on the consent of the parties, and praying that this court adjudge said decree to be vacated in its entirety or so to be modified as to allow the consenting defendants to resume

their dealings in the so-called unrelated commodities or to allow them to use their distribution facilities for the purpose of moving same; and the said petition, verified April 17, 1922, together with the objection and verified answer thereto of the Southern (now American) Wholesale Grocers' Association; the objection and verified answer of the National Wholesale Grocers' Association; objections to the granting of said petition orally stated by the attorneys for the United States at the bar herein; the hearings entitled 'Packers consent decree' before a subcommittee of the Committee on Agriculture and Forestry, United States Senate, pursuant to Senate Resolution No. 211, dated March 23, 1922, and April 21, 1922, comprising the hearings before interdepartmental committee appointed by the Attorney General to consider the modification of said consent decree; the statement of the defendant, Cudahy Packing Company, filed June 14, 1922, and the statement of the defendant, Morris & Company, filed June 14, 1922; the original bill and answer of the defendants and all prior pleadings and proceedings heretofore had herein; oral argument of counsel for the parties and for the intervening grocers'
323 associations; the petition for reargument filed herein by the said California Cooperative Canneries, and the answers and objections thereto, having all been submitted to and considered by the court, it is, this 18th day of May, 1923,

"Ordered, adjudged, and decreed that the petition of the California Cooperative Canneries for leave to intervene herein for the purposes set forth in the said petition be, and the same is hereby, denied; and that the petition for reargument herein be, and the same is hereby, also denied.

"By the court.

"JENNINGS BAILEY, *Justice*."

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

324 And whereas in the present term of April, in the year of our Lord one thousand nine hundred and twenty-four, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said Supreme Court in this cause be, and the same is hereby, reversed, with costs against appellees other than the United States, and that the said plaintiff, California Cooperative Canneries, recover against the said defendants other than the United States, five hundred and eighty-nine dollars and thirty-seven cents for its costs herein expended and have execution therefor;

And it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court that the appellant be

allowed to intervene and such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition.

June 2, 1924.

325 You, therefore, are hereby commanded that such execution and further proceedings be had in said cause in conformity with the opinion and decree of this court as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable George E. Martin, Chief Justice of said Court of Appeals, the 20th day of June, in the year of our Lord one thousand nine hundred and twenty-four.

[SEAL.] (Signed) HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Costs of petitioner: Clerk, $97.00; attorney, $5.00; printing record, $489.37.

326 [File indorsement omitted.]

In Court of Appeals of the District of Columbia

No. 4071

CALIFORNIA COOPERATIVE CANNERIES, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

On appeal from the Supreme Court of the District of Columbia

Motion to vacate decision and mandate

Filed April 24, 1928

Now comes the United States of America, by William J. Donovan, the assistant to the Attorney General, and H. B. Teegarden, special assistant to the Attorney General, acting under direction of the Attorney General, and moves the court to vacate, set aside, and declare null and void its decision and judgment in the above-entitled cause heretofore rendered June 2, 1924 (299 Fed. 908), and its mandate thereon, entered June 20, 1924, for the reason that the court was wholly without jurisdiction to hear and determine the 327 appeal upon which said decision, judgment, and mandate were rendered, as will more fully appear from the memorandum hereto appended.

WILLIAM J. DONOVAN,
The Assistant to the Attorney General.
H. B. TEEGARDEN,
Special Assistant to the Attorney General.

Notice of hearing

Counsel for appellants in the above-entitled cause will please take notice that the foregoing motion will be submitted to the court on Friday, April 27, 1928, or as soon thereafter as counsel can be heard.

H. B. TEEGARDEN,
Special Assistant to the Attorney General.

Service of a copy of the foregoing motion and notice and of the attached statement is hereby acknowledged this 19th day of April, 1928.

FRANK J. HOGAN,
Per E. L. JONES,
Counsel for California Cooperative Canneries.

Memorandum in support of motion to vacate

Statement

In 1920 the United States brought suit in the Supreme Court of the District of Columbia for an injunction against the five principal meat packers and their subsidiaries, charging them with
328 violations of the Sherman Antitrust Act of July 2, 1890,[1] c. 647, 26 Stat. 209 (R. 2–18).

This was followed by the entry of a decree on consent of all the parties thereto enjoining various practices of the defendants, among them the handling of canned fruits and other commodities unrelated to the meat-packing business (119–129).

In 1922 the California Cooperative Canneries filed in the same court a motion for leave to intervene in this suit (R. 149),
329 alleging that the consent decree had resulted in the destruction of certain of their contract rights without due hearing. Their motion was denied (R. 266, 305), and they took an appeal to this court (R. 305).

In its decision of June 2, 1924 (California Cooperative Canneries v. United States, 299 Fed. 808), and its mandate of June 20th following, this court reversed the decision of the supreme court below

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[1] Sections 1, 2, and 4 of this act provide:

"SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited."

and ordered "that the appellant be allowed to intervene and such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition." It is this judgment and mandate that the United States now moves to vacate on the ground that the appeal was beyond the jurisdiction of the court.

Upon the allowance of intervention by the court below in accordance with the mandate, the canneries, together with the Swift and Armour groups of defendants, filed their respective motions to vacate and set aside the consent decree of 1920 as null and void. In its order of May 1, 1925, the court denied the motions of the Swift and Armour defendants and held the decree valid, but granted that of the canneries so far as to suspend the operation of the decree pending a hearing on the merits.

From the portion of this order denying their motions the Swift and Armour defendants took appeals to this court, where they were at first dismissed for lack of jurisdiction January 3, 1927. This decision was later vacated pending the determination of certain
330 jurisdictional questions which were certified to the Supreme Court of the United States. That court ordered up the entire record, and in its decision of March 19, 1928 (Swift & Company et al. v. United States, No. 181, October term, 1927), affirmed the Supreme Court of the District as to the validity of the consent decree, but held that this court has no jurisdiction over appeals from final decrees in antitrust suits brought by the United States in the District of Columbia, because of the operation of the expediting act of February 11, 1903,[1] 32 Stat. 823, thus sustaining the position originally taken by this court in its decision of January 3, 1927.

Argument

The present motion is but the natural consequence of the recent decision of the Supreme Court above referred to. The canneries applied for leave to intervene in a suit in equity brought by the United States under the Sherman Antitrust Act of 1890. Their petition was captioned under the title and docket number of
331 that suit. (See Swift case, supra, Adv. Op., p. 4). It assumed by its very nature the existence of that suit for purposes of the intervention, for unless there was an existing suit there was nothing in which they could intervene. The order of the court below, therefore, entered in denial of the canneries' appeal, either was or was not a final decree in that suit. If it was not a final decree, then this court had no jurisdiction even under section 226,

[1] Section 2 of this act provides:

"SEC. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court, and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law."

D. C. Code. If it was a final decree, then this court, under the Swift decision, supra, is deprived of jurisdiction by section 2 of the expediting act (supra, p. 3), for the suit in which it was entered was a suit in equity brought by the United States to enjoin violations of the Sherman Act.

It makes no difference that the decree involved the rights of an intervener rather than one of the original parties, or that the appeal was taken by an intervener. In Continental Insurance Company v. United States, 259 U. S. 156, certain insurance companies had come in as interveners to protect their interests as minority stockholders in the dissolution of the Reading Company in execution of a mandate of the Supreme Court of the United States in United States v. Reading Company, 253 U. S. 26. The lower court entered a decree adjudicating the rights of these interveners. They took appeals to the Supreme Court of the United States. In the Insurance Company case, supra, these appeals were entertained and deter-
332 mined, the court expressly recognizing at the beginning of its opinion (p. 165) that they came up under the expediting act of 1903.

Neither is it material that the decision sought to be vacated is that of an appellate court rather than a court of original jurisdiction. It is a cardinal principle of law that the decision or judgment of any court entered without jurisdiction is absolutely null and void. It may be attacked in a collateral proceeding in any other court or by motion to vacate made by the affected party in the court of its rendition; and the right to have it thus declared invalid and set aside is not affected by laches, by the statute of limitations, or by the expiration of the term in which it was entered. These principles were thoroughly argued before this court by the packers, and conceded by the Government, in the former's attempt to have the consent decree declared void (Swift & Company v. United States, No. 4395). They are clearly announced in decisions of this court in Morse v. United States to the use of Hine, 29 App. D. C. 433, 439; Briesce v. Macfarland, 32 App. D. C. 167, 177 (affirmed 221 U. S. 547); Tenney v. Taylor, 1 App. D. C. 223, 227; Harper v. Cunningham, 8 App. D. C. 430, 449; Macfarland v. Saunders, 25 App. D. C. 438, 441; and by decisions of the Supreme Court of the United States in Galpin v. Page, 18 Wall. 350, 373; Elliott v. Peirsol, 1 Peters 328, 340; Shriver's Lessee v. Lynn, 2 How. 43, 59; Williamson v. Berry, 8 How. 495, 541-2; and Hickey v. Stewart, 3 How. 750.

333 The last-named case is direct authority that appellate courts constitute no exception to the above principles. It involved an action of ejectment. The land was in Mississippi. One claimant based his title on a certificate of the duly appointed land commissioners of the United States; the other upon an adjudication by the Supreme Court of the State of Mississippi. On writ of error to the Supreme Court of the United States the Supreme Court of Mississippi was declared to be without jurisdiction and its adjudication

accordingly null and void, even though it was the highest appellate court in the State of Mississippi. What the Supreme Court of the United States could do, the Supreme Court of Mississippi certainly could have done of its own motion or on motion of one of the parties.

That application by motion is an appropriate way in which to seek the vacation of a void decree is further confirmed by Freeman on Judgments, 5th ed., Vol. I, sec. 273; and Black on Judgments, 2nd ed., Vol. I, sec. 303; and cases cited.

Conclusion

For these reasons it is respectfully submitted that this court's decision and judgment of June 2, 1924, in the above-entitled cause and its mandate thereon of June 20, 1924, should be set aside.

WILLIAM J. DONOVAN,
The Assistant to the Attorney General.
H. B. TEEGARDEN,
Special Assistant to the Attorney General.

334 In Court of Appeals of the District of Columbia

May 18, 1928

• • • • • • •

[Title omitted.]

Order denying motion to vacate

May 18, 1928

On consideration of the motion to vacate the decision and mandate in the above-entitled cause, it is ordered by the court that said motion be, and the same is hereby, denied.

335 In Court of Appeals of the District of Columbia

[Title omitted.]

Praecipe for transcript of record

Filed July 31, 1928

For the purpose of filing a petition for writ of certiorari in the Supreme Court of the United States in the above-entitled cause the United States of America hereby requests the clerk of the Court of Appeals of the District of Columbia to prepare a transcript of record, including therein the following papers and proceedings, namely:

1. Transcript of record on appeal from the Supreme Court of the District of Columbia, filed December 4, 1923.
2. Argument.

3. Opinion.
4. Decree.
5. Mandate from Court of Appeals, filed June 20, 1924.
6. Motion by the United States to set aside judgment and mandate, filed April 24, 1928.
7. Order denying motion to vacate, entered May 18, 1928.
8. This designation of record.

H. B. TEEGARDEN,
Special Assistant to the Attorney General.

[File indorsement omitted.]

○

Supreme Court of the United States

Order allowing certiorari

Filed October 22, 1928

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

INDEX

Petition:

	Page
Question presented	1
Statutes involved	2
Statement of case	3
Specification of errors	6
The reasons for granting the writ	6

Brief:

Opinions below	7
Jurisdiction	7
Statement	8
Argument	8
Conclusion	13

CITATIONS

Cases:

Bank of United States v. *Moss*, 6 How. 31	12
Boss v. *Fontleroy*, 11 Tex. 698	9
Briesne v. *Macfarland*, 32 App. D. C. 167; affd., 221 U. S. 547	8
Bronson v. *Schulten*, 104 U. S. 410	12
City of Olney v. *Harvey*, 50 Ill. 453	9
Continental Insurance Co. v. *United States*, 259 U. S. 156	11
Crane v. *Barry*, 47 Ga. 476	9
Crenshaw, Ex parte, 15 Pet. 119	8, 9
Elliott v. *Peirsol*, 1 Pet. 328	8
Galpin v. *Page*, 18 Wall. 350	8
Harman v. *Barhydt*, 20 Neb. 625	9
Harper v. *Cunningham*, 8 App. D. C. 430	8
Henry v. *Travelers' Insurance Co.*, 16 Colo. 179	9
Hervey & Co. v. *Edmunds*, 68 N. C. 243	9
Hickey v. *Stewart*, 3 How. 750	8
Macfarland v. *Saunders*, 25 App. D. C. 438	8
Mills & Co. v. *Dickson & Mills*, 6 Rich. Law (S. C.) 487	9
Morse v. *United States to Use of Hine*, 29 App. D. C. 433	8, 9
Mosseur v. *United States*, 266 Fed. 18	9
Phillips v. *Negley*, 117 U. S. 665	12
People v. *Pfeiffer*, 39 Colo. 89	9
Rollins v. *Rollins*, 76 N. C. 264	9
Schlieder v. *Martinez*, 38 La. Ann. 847	9
Shriver's Lessee v. *Lynn*, 2 How. 43	8
Sibbald, Ex parte v. *United States*, 12 Pet. 488	12
Stick v. *Dickinson*, 38 Cal. 608	9

Cases—Continued. Page

Swift & Co. v. *United States*, No. 181, Oct. Term, 1927... 4, 5, 7, 10

Tenney v. *Taylor*, 1 App. D. C. 223..... 8

United States v. *Mayer*, 235 U. S. 55..... 12

United States v. *Reading Co.*, 253 U. S. 26..... 11

United States v. *Rothstein*, 187 Fed. 288..... 9

Williamson v. *Berry*, 8 How. 495..... 8

Statutes, etc.:

Expediting Act of February 11, 1903, c. 544, Sec. 2, 32 Stat. 823; U. S. C. Title 15, Sec. 29..... 3

D. C. Code, Sec. 226..... 2

Black on Judgments, Vol. 1 (2d ed.), Secs. 303, 318..... 9

Cooley's "Constitutional Limitations" (7th ed.) 576..... 9

Freeman on Judgments, Vol. 1 (5th ed.), Sec. 273..... 9

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. ——

UNITED STATES OF AMERICA, PETITIONER

v.

CALIFORNIA CO-OPERATIVE CANNERIES

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

The Solicitor General, on behalf of United States of America, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia entered in the above case May 18, 1928 (R. 321), denying a motion by the United States to vacate and set aside as null and void, for lack of jurisdiction, its decision and judgment thereinbefore rendered June 2, 1924, and its mandate thereon of June 20, 1924.

QUESTION PRESENTED

The question presented in this case is whether the Court of Appeals of the District of Columbia had jurisdiction to entertain an appeal from a final decree of the Supreme Court of the District of

Columbia, entered in a suit in equity brought by the United States under the Sherman Antitrust Act, denying the application of a third party for leave to intervene in such suit.

STATUTES INVOLVED

Section 226, District of Columbia Code, which confers general appellate jurisdiction upon the Court of Appeals of the District of Columbia, provides:

> Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals; and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. Appeals shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and also from any other interlocutory order, in the discretion of the said court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal.

But Section 2 of the Expediting Act of February 11, 1903, c. 544, 32 Stat. 823 (see U. S. C. Title 15, Sec. 29), which governs appeals from final decrees in suits in equity brought by the Government under Federal antitrust laws, provides:

> That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said Acts [enumerated in Sec. 1, and including the Sherman Act], wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof * * *.

STATEMENT OF CASE

In 1920 the United States brought suit in equity in the Supreme Court of the District of Columbia under the Sherman Antitrust Act of 1890, c. 647, 26 Stat. 209, against the five principal meat packers and their subsidiaries, charging them with an attempt to monopolize the nation's food supply, and alleging that, as a means to that end, they were engaged in the business of handling wholesale groceries, canned fruits, and other commodities unrelated to the meat-packing industry. (R. 1–17.) The defendants filed answers (R. 18–115), but did not stand trial on any issues of fact therein presented. They consented to the entry of an injunction decree against them, restraining them, among other things, from handling these unrelated com-

modities, including canned fruits. (R. 118–131.) The validity of this decree has recently been sustained by this Court. (*Swift & Co.* v. *United States*, No. 181, Oct. Term, 1927, decided March 19, 1928.)

In 1922 the California Cooperative Canneries filed in the same court their motion for leave to intervene in this suit (R. 147), accompanied by their intervening petition (R. 147–218). In this petition the Canneries alleged a contract with Armour and Company, one of the defendants, under which that company was purchasing annually a large portion of their output of canned fruits (R. 148–152); and that as a result of the consent decree Armour & Company had been compelled to discontinue the performance of this contract. This, the Canneries claimed, constituted a deprivation of their contract rights without due process of law. In its final decree of May 8, 1923 (R. 304), the court denied this application and the Canneries appealed to the Court of Appeals of the District of Columbia.

That court, on June 2, 1924, rendered its decision (299 Fed. 908; R. 308) and judgment (R. 315), and on June 20 following its mandate thereon (R. 315), reversing the decision of the Supreme Court below, and ordering "that the appellant be allowed to intervene and such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition." It is this judgment and mandate that the United States now seeks to have vacated and set

aside on the ground that the appeal therein determined was beyond the jurisdiction of that court.

In the proceedings which followed in the Supreme Court of the District of Columbia pursuant to the Court of Appeals' mandate, the Canneries, and later the Swift and Armour groups of defendants, filed motions to vacate the consent decree of 1920 as null and void. Without hearing any evidence upon the issues raised by the Canneries' petition in intervention and the Government's answer thereto, the court, by its order of May 1, 1925, denied the Swift and Armour motions, but granted the Canneries' motion so far as to suspend the operation of the decree as a whole pending a hearing on the merits. (See Transcript of Record in *Swift & Co.* v. *United States*, No. 181, Oct. Term, 1927, pp. 313, 318, 322, 334, 341.)

The Swift and Armour defendants took appeals to the Court of Appeals of the District of Columbia. These appeals finally came to this Court and were determined by its decision of March 19, 1928, *supra*, sustaining the Supreme Court below and the validity of the consent decree of 1920, and holding that the Court of Appeals was without jurisdiction over the Swift and Armour appeals.

The United States then filed motion in the Court of Appeals (R. 317) to set aside for lack of jurisdiction its judgment of June 2 and mandate of June 20, 1924, above referred to, on the ground that the appeal therein determined was likewise removed from its jurisdiction by the Expediting Act of

1903. This motion was denied by the court without opinion, May 18, 1928 (R. 321), and it is this decision which the United States now seeks to bring before this Court for its review.

SPECIFICATION OF ERRORS

1. The Court of Appeals erred in denying the motion of the United States to vacate its judgment and mandate of 1924 as without jurisdiction.

2. The Court of Appeals erred in holding that it had jurisdiction over the appeal of the California Cooperative Canneries from the order of the Supreme Court of the District of Columbia denying the Canneries' application for leave to intervene.

3. The Court of Appeals erred in refusing to hold that said appeal of the California Cooperative Canneries was within the provisions of Section 2 of the Expediting Act of 1903.

THE REASONS FOR GRANTING THE WRIT

1. The question is one of general importance. Consent decrees have been an effective means for the enforcement of Federal antitrust laws. It is highly important that attempts to prevent their enforcement by the intervention of third parties should be quickly and expeditiously determined by this Court without protracted intermediate appellate procedure, and to that end that appeals from final decrees upon applications of intervention in antitrust suits should not be excluded, by construc-

tion, from the express provisions of the Expediting Act.

2. The question is one of substance relating to the construction of Section 2 of the Expediting Act of 1903, as applied to final decrees in antitrust suits upon applications to intervene.

3. In the determination of that question the Court of Appeals of the District of Columbia failed to give proper effect to the decision of this Court in *Swift & Co.* v. *United States,* No. 181, October Term, 1927, decided March 19, 1928.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Court of Appeals of the District of Columbia should be granted.

WILLIAM D. MITCHELL,
Solicitor General.

AUGUST, 1928.

BRIEF IN SUPPORT OF THE PETITION

OPINIONS BELOW

No opinion was filed by the Court of Appeals when denying the motion to vacate its former judgment.

JURISDICTION

The judgment of the Court of Appeals was entered May 18, 1928. (R. 321.) Jurisdiction of this Court is invoked under Sec. 240(a), Judicial Code, Act of February 13, 1925, c. 229, 43 Stat. 936, 938.

STATEMENT

A statement of the facts and of the statutes involved and of the errors relied on will be found in the petition.

ARGUMENT

I. The decision or judgment of any court rendered without jurisdiction is void.

Galpin v. *Page*, 18 Wall. 350, 373.

Elliott v. *Peirsol*, 1 Pet. 328, 340.

Shriver's Lessee v. *Lynn*, 2 How. 43, 60.

Williamson v. *Berry*, 8 How. 495, 541–542.

Morse v. *U. S. to the use of Hine*, 29 App. D .C. 433, 439.

Briscoe v. *Macfarland*, 32 App. D. C. 167, 173; affirmed 221 U. S. 547.

Tenney v. *Taylor*, 1 App. D. C. 223, 227.

Harper v. *Cunningham*, 8 App. D. C. 430, 439.

Macfarland v. *Saunders*, 25 App. D. C. 438, 441.

It is immaterial that the void decree is that of an appellate court rather than a court of original jurisdiction. In *Hickey* v. *Stewart*, 3 How. 750, this Court declared void for lack of jurisdiction a judgment of the Supreme Court of the State of Mississippi. In *Ex Parte Crenshaw*, 15 Pet. 119, this Court set aside, for lack of jurisdiction over the parties, its own judgment and mandate rendered at a previous term on appeal from a United States Circuit Court, the appellee never having been served with citation on appeal.

II. It is the duty of the court which entered a void judgment to vacate and set it aside on motion or application by the party against whom it was rendered.

Ex Parte Crenshaw, supra.
United States v. *Rothstein*, 187 Fed. 268.
Mossew v. *United States*, 266 Fed. 18.
Morse v. *U. S. to the use of Hine*, 29 App. D. C. 433.
Crane v. *Barry*, 47 Ga. 476.
City of Olney v. *Harvey*, 50 Ill. 453.
Hervey & Co. v. *Edmunds*, 68 N. C. 243.
Mills & Co. v. *Dickson & Mills*, 6 Rich. Law (S. C.) 487.
Cooley's "Constitutional Limitations" 7th Ed., p. 576.
I Freeman on Judgments, 5th Ed., Sec. 273.
I Black on Judgments, 2nd Ed., Secs. 303, 318.

III. A decree denying an application for leave to intervene is final.

Stich v. *Dickinson*, 38 Cal. 608.
People v. *Pfeiffer*, 59 Cal. 89.
Henry v. *Travelers' Insurance Co.*, 16 Colo. 179.
Rollins v. *Rollins*, 76 N. C. 264.
Schlieder v. *Martinez*, 38 La. Ann. 847.
Harman v. *Barhydt*, 20 Neb. 625.
Bass et al. v. *Fontleroy*, 11 Tex. 698.

IV. When such a decree is entered in an anti-trust suit in equity brought by the United States, it

is within Section 2 of the Expediting Act, and can be appealed only to the Supreme Court of the United States. This is the result of the express language of Section 2, which refers to final decrees in such suits without qualification or discrimination.

It is immaterial that the decree does not finally dispose of the issues of the principal suit. *Swift & Co.* v. *United States*, No. 181, October Term, 1927, March 19, 1928. In that case the final decree in question passed only on certain jurisdictional questions concerning the earlier decrees which did dispose of the issues in the principal suit—questions which depended for their determination, not upon the statutory antitrust laws, but upon general principles of court jurisdiction. This Court held, nevertheless, that the Court of Appeals had no jurisdiction over the appeals from the final decree in question; and the effect of its decision is that no test can be read into the Expediting Act whereby part of the final decrees therein generally referred to can be excluded from its meaning. No adequate selection can be made on the basis of what the decree decides. The Act concerns appeals, and if any particular test of finality is to be used, it must be finality for purposes of appeal.

It is likewise immaterial that the decree appealed from was entered upon the application of an intervener. It was nevertheless a final decree in the principal suit. The public interest is bound up

with the principal suit, and it was the purpose of the Expediting Act to advance that public interest by enabling the earlier final determination of the suit and the effective enforcement of its decrees. Anything that interferes with that object is within the spirit of the Act, and, if also within its letter, should not be excluded from its meaning. It will certainly interfere with the expeditious progress of antitrust litigation if third party interveners may stay its course while dragging through intermediate appellate courts the final decrees entered in determination of their rights. For if such decrees are not within the Expediting Act, there is no law requiring priority to be given to their determination.

Continental Insurance Co. v. *United States*, 259 U. S. 156, is in point. Certain insurance companies had come in as interveners to protect their interests as minority stockholders in the dissolution of the Reading Company in execution of a mandate of the Supreme Court of the United States in *United States* v. *Reading Company*, 253 U. S. 26. The lower court entered a decree adjudicating the rights of these interveners. They took appeals to the Supreme Court of the United States. In the *Insurance Company case, supra*, these appeals were entertained and determined, the court expressly recognizing at the beginning of its opinion (p. 165) that they came up under the Expediting Act of 1903.

V. Substantial relief to the Government depends upon the granting of this petition and the reversal of the Court of Appeals' judgment of May 18, 1928.

The decree of the Supreme Court of the District of Columbia of May 8, 1923, denying the Canneries' application to intervene was final. (See paragraph III, *supra*.) A court has no power to alter or set aside its final judgments or decrees after the expiration of the term at which they were entered, except for jurisdictional invalidity and certain formal defects not here involved. *Bank of United States* v. *Moss*, 6 How. 31; *Ex Parte Sibbald* v. *United States*, 12 Pet. 488; *Bronson* v. *Schulten*, 104 U. S. 410; *Phillips* v. *Negley*, 117 U. S. 665; *United States* v. *Mayer*, 235 U. S. 55. By the lower court's decree of May 8, 1923, therefore, its denial of the Canneries' right to intervene in this suit became *res judicata;* and until the receipt of the Court of Appeals' mandate of June 20, 1924, the lower court had no jurisdiction or authority to alter or set aside that decree or to take any other proceedings not in harmony with it.

The Court of Appeals' mandate directed further proceedings in the Supreme Court below to determine the issues raised in the Canneries' intervention. In the course of those proceedings the latter court, by its order of May 1, 1925, suspended the consent decree of 1920, pending full hearing on these issues. As above explained, these proceedings rested solely upon the authority of the Court of Appeals' judgment and mandate; and if the latter are invalid for lack of jurisdiction, the order of suspension must fall with them. Thus, the decree

heretofore held valid by this Court will then be restored to operative effect and rendered enforceable by the Government and by the courts.

CONCLUSION

It is respectfully submitted that because of the importance of the question involved the writ should issue.

WILLIAM D. MITCHELL,
Solicitor General.
WILLIAM J. DONOVAN,
Assistant to the Attorney General.
H. B. TEEGARDEN,
Special Assistant to the Attorney General.

AUGUST, 1928.

○

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 375

UNITED STATES OF AMERICA, PETITIONER

v.

CALIFORNIA COOPERATIVE CANNERIES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

MOTION BY THE UNITED STATES TO ADVANCE

Comes now the United States by the Solicitor General and moves the Court to advance the above-entitled cause for hearing on a day convenient to the Court.

STATEMENT

Under Section 4 of the Sherman Antitrust Act of July 2, 1890, c. 647, 26 Stat. 209 (U. S. C. Title 15, Sec. 4), and Section 15 of the Clayton Antitrust Act of October 15, 1914, c. 323, 38 Stat. 730, 736 (U. S. C. Title 15, Sec. 25), the United States, as complainant, on February 27, 1920, brought a suit in equity

19747—28

in the Supreme Court of the District of Columbia against the above appellees, and others engaged in the meat-packing industry, to restrain and enjoin them from threatened violations of the aforesaid Acts. (R. 1–17.)

On the same day a final decree was entered by consent of the parties enjoining various threatened acts and practices of the defendants therein, as prayed in the petition: *Inter alia*, the continued holding by defendants of capital stock in public stockyard market companies and terminal railroads, and the continued handling by defendants of and dealing in commodities unrelated to the meat-packing industry, such as wholesale groceries and canned goods. (R. 118–131.)

In 1922 the California Cooperative Canneries filed motion in the Supreme Court of the District of Columbia for leave to intervene in this suit, accompanied by its intervening petition. (R. 147–218.) The motion was denied (R. 266, 303, 304) and the Canneries appealed to the Court of Appeals of the District of Columbia (R. 305), which, in 1924, reversed the lower court (R. 308), and ordered that the Canneries "be allowed to intervene and such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition" (R. 315), issuing mandate accordingly to the Supreme Court of the District of Columbia (R. 315–317). In the proceed-

ings which followed in the court below the court, on motion by the Canneries, suspended entirely the operation of the consent decree of 1920, pending the completion of the proceedings ordered by the Court of Appeals. (See Transcript of Record in *Swift & Co.* v. *United States*, No. 181 Oct. Term, 1927, pp. 322, 341.)

The subsequent decision by this Court in *Swift & Company* v. *United States*, 276 U. S. 311, held that the Court of Appeals is without jurisdiction to entertain appeals from final decrees in antitrust suits in the Supreme Court of the District of Columbia. The Government accordingly, on April 24, 1928, filed a motion in the Court of Appeals to set aside its judgment and mandate of 1924 on the appeal of the Canneries as void for lack of jurisdiction. (R. 317.) This motion was denied (R. 321) and the judgment of the Court of Appeals denying it is now before this Court for review on writ of certiorari.

QUESTION PRESENTED

The question presented in this case is whether the Court of Appeals of the District of Columbia had jurisdiction to entertain an appeal from a final decree of the Supreme Court of the District of Columbia, entered in a suit in equity brought by the United States under the Sherman Antitrust Act, denying the application of a third party for leave to intervene in such suit.

REASON FOR ADVANCING

The early and final determination of this question and of the whole case is of importance to the Department of Justice in the administration of the Antitrust laws of the United States, both in the District of Columbia and elsewhere. Furthermore, it is impractical to continue with the proceedings ordered in the court below, depending as they do upon the Court of Appeals' judgment and mandate, so long as there is doubt as to their jurisdictional validity. In the meantime the consent decree of 1920, and with it the entire operative results of the principal suit remain in suspension by the lower court's order, which was also entered under authority of the mandate. Thus the decision of the question here presented will govern the Department of Justice in the further handling of this case and in the future administration of the law. An early determination by this Court is therefore desirable.

The record has been printed and the brief for the United States has been filed.

Notice of this motion has been served upon counsel for the respondent.

WILLIAM D. MITCHELL,
Solicitor General.

WILLIAM J. DONOVAN,
The Assistant to the Attorney General.

H. B. TEEGARDEN,
Special Assistant to the Attorney General.

NOVEMBER, 1928.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement of case	3
Specification of errors	6
Summary of argument	6
Argument	7
Conclusion	12

CITATIONS

Cases:	
Bank of United States v. *Moss*, 6 How. 31	11
Bass v. *Fontleroy*, 11 Tex. 698	9
Briscoe v. *Macfarland*, 32 App. D. C. 167; affd. 221 U. S. 547	7
Bronson v. *Schulten*, 104 U. S. 410	11
City of Olney v. *Harvey*, 50 Ill. 453	8
Continental Insurance Co. v. *United States*, 259 U. S. 156	11
Crane v. *Barry*, 47 Ga. 476	8
Crenshaw, Ex Parte, 15 Pet. 119	8
Elliott v. *Peirsol*, 1 Pet. 328	7
Galpin v. *Page*, 18 Wall. 350	7
Harman v. *Borkydt*, 20 Neb. 625	9
Harper v. *Cunningham*, 8 App. D. C. 430	7
Henry v. *Travelers' Insurance Co.*, 16 Colo. 179	9
Hervey & Co. v. *Edmunds*, 68 N. C. 243	8
Hickey v. *Stewart*, 3 How. 750	8
Macfarland v. *Saunders*, 25 App. D. C. 438	7
Mills & Co. v. *Dickson & Mills*, 6 Rich. Law (S. C.) 487	8
Morse v. *United States to Use of Hine*, 29 App. D. C. 433	7, 8
Mosnew v. *United States*, 266 Fed. 18	8
Phillips v. *Negley*, 117 U. S. 665	11
People v. *Pfeiffer*, 59 Cal. 89	9
Rollins v. *Rollins*, 76 N. C. 264	9
Schlueder v. *Martinez*, 38 La. Ann. 847	9
Shriver's Lessee v. *Lynn*, 2 How. 43	7
Sibbald, Ex Parte, v. *United States*, 12 Pet. 488	11
Stich v. *Dickinson*, 38 Cal. 608	9

19746—28

Cases—Continued	Page
Swift & Co. v. *United States*, 276 U. S. 311	4, 5, 9
Tenney v. *Taylor*, 1 App. D. C. 223	7
United States v. *Mayer*, 235 U. S. 55	11, 12
United States v. *Reading Co.*, 253 U. S. 26	11
United States v. *Rothstein*, 187 Fed. 268	8
Williamson v. *Berry*, 8 How. 495	7
Statutes, etc.:	
Expediting act of February 11, 1903, c. 544, sec. 2, 32 Stat. 823; U. S. C. Title 15, sec. 29	3, 6, 7, 9, 10, 11
D. C. Code, sec. 226	2-3
Black on Judgments, Vol. I (2d ed.), secs. 303, 318	8
Cooley's "Constitutional Limitations" (7th ed.) 576	8
Freeman on Judgments, Vol. I (5th ed.), sec. 273	8

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 375

UNITED STATES OF AMERICA, PETITIONER

v.

CALIFORNIA CO-OPERATIVE CANNERIES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

No opinion was filed by the Court of Appeals when denying the motion to vacate its former judgment.

JURISDICTION

The judgment of the Court of Appeals was entered May 18, 1928. (R. 321.) Petition for certiorari was filed August 18, 1928, and granted October 22, 1928. Jurisdiction of this Court is invoked under Sec. 240(a), Judicial Code, Act of February 13, 1925.

QUESTION PRESENTED

The question presented in this case is whether the Court of Appeals of the District of Columbia had jurisdiction to entertain an appeal from a final decree of the Supreme Court of the District of Columbia, entered in a suit in equity brought by the United States under the Sherman Antitrust Act, denying the application of a third party for leave to intervene in such suit.

STATUTES INVOLVED

Section 226, District of Columbia Code, which confers general appellate jurisdiction upon the Court of Appeals of the District of Columbia, provides:

> Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals; and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. Appeals shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving

> writs of attachment, and the like; and also from any other interlocutory order, in the discretion of the said court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal.

But Section 2 of the Expediting Act of February 11, 1903, c. 544, 32 Stat. 823 (U. S. C. Title 15, Sec. 29), which governs appeals from final decrees in suits in equity brought by the Government under Federal antitrust laws, provides:

> That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said Acts [enumerated in Sec. 1, and including the Sherman Act], wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof * * *.

STATEMENT OF CASE

In 1920 the United States brought suit in equity in the Supreme Court of the District of Columbia under the Sherman Antitrust Act of 1890, c. 647, 26 Stat. 209, against the five principal meat packers and their subsidiaries, charging them with an attempt to monopolize the nation's food supply, and alleging that, as a means to that end, they were engaged in the business of handling wholesale groceries, canned fruits, and other commodities unrelated to the meat-packing industry. (R. 1–17.)

The defendants filed answers (R. 18–115), but did not stand trial on any issues of fact therein presented. They consented to the entry of an injunction decree against them, restraining them, among other things, from handling these unrelated commodities, including canned fruits. (R. 118–131.) The validity of this decree has recently been sustained by this Court. (*Swift & Company* v. *United States*, 276 U. S. 311.)

In 1922 the California Cooperative Canneries filed in the same court their motion for leave to intervene in this suit (R. 147), accompanied by their intervening petition (R. 147–218). In this petition the Canneries alleged a contract with Armour and Company, one of the defendants, under which that company was purchasing annually a large portion of their output of canned fruits (R. 148–152); and that as a result of the consent decree Armour & Company had been compelled to discontinue the performance of this contract.* This, the Canneries claimed, constituted a deprivation of their contract rights without due process of law. In its final decree of May 8, 1923 (R. 304), the court denied this application and the Canneries appealed to the Court of Appeals of the District of Columbia.

That court, on June 2, 1924, rendered its decision (299 Fed. 908; R. 308) and judgment (R. 315), and on June 20 following issued its mandate thereon (R. 315), reversing the decision of the Su-

* This contract would in any case expire according to its terms this coming January 1, 1929. (R. 152.)

preme Court below, and ordering "that the appellant be allowed to intervene and such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition." It is this judgment and mandate that the United States now seeks to have vacated and set aside on the ground that the appeal therein determined was beyond the jurisdiction of that court.

In the proceedings which followed in the Supreme Court of the District of Columbia pursuant to the Court of Appeals' mandate, the Canneries, and also the Swift and Armour groups of defendants, filed motions to vacate the consent decree of 1920 as null and void. Without hearing any evidence upon the issues raised by the Canneries' petition in intervention and the Government's answer thereto, the court, by its order of May 1, 1925, denied the Swift and Armour motions, but granted the Canneries' motion so far as to suspend the operation of the decree as a whole pending a hearing on the merits. (See Transcript of Record in *Swift & Co.* v. *United States*, No. 181, Oct. Term, 1927, pp. 313, 318, 322, 334, 341.)

The Swift and Armour defendants took appeals to the Court of Appeals of the District of Columbia. These appeals finally came to this Court and were determined by its decision of March 19, 1928, *supra*, sustaining the Supreme Court below and the validity of the consent decree of 1920, and holding that the Court of Appeals was without jurisdiction over the Swift and Armour appeals.

The United States then filed motion in the Court of Appeals (R. 317) to set aside for lack of jurisdiction its judgment of June 2 and mandate of June 20, 1924, above referred to, on the ground that the appeal therein determined was likewise removed from its jurisdiction by the Expediting Act of 1903. This motion was denied by the court without opinion, May 18, 1928 (R. 321), and it is this decision which is now before this Court for its review upon writ of certiorari.

SPECIFICATION OF ERRORS

1. The Court of Appeals erred in denying the motion of the United States to vacate its judgment and mandate of 1924 as without jurisdiction.

2. The Court of Appeals erred in holding that it had jurisdiction over the appeal of the California Cooperative Canneries from the order of the Supreme Court of the District of Columbia denying the Canneries' application for leave to intervene.

3. The Court of Appeals erred in refusing to hold that said appeal of the California Cooperative Canneries was within the provisions of Section 2 of the Expediting Act of 1903.

SUMMARY OF ARGUMENT

The judgment of any court rendered without jurisdiction is void, and it is the duty of such court to set it aside on motion by the party against whom it was rendered.

A decree denying application for leave to intervene is final, and when the same is made in an anti-trust suit in equity brought by the United States, an appeal from such decree lies only to this Court under Section 2 of the Expediting Act. It is immaterial that the final decree in question is not the one disposing of the issues of the principal suit, or that it was entered in determination of an intervener's rights.

Substantial relief to the Government will result from the reversal of the Court of Appeals' judgment of May 18, 1928, refusing to vacate its judgment and mandate of 1924, since upon the former judgment rests the lower court's order suspending entirely the consent decree of 1920.

ARGUMENT

1. The decision or judgment of any court rendered without jurisdiction is void.

Galpin v. *Page*, 18 Wall. 350, 373.
Elliott v. Peirsol, 1 Pet. 328, 340.
Shriver's Lessee v. *Lynn*, 2 How. 43, 60.
Williamson v. *Berry*, 8 How. 495, 541–542.
Morse v. *U. S. to the use of Hine*, 29 App. D. C. 433, 439.
Briscoe v. *Macfarland*, 32 App. D. C. 167, 173; affirmed 221 U. S. 547.
Tenney v. *Taylor*, 1 App. D. C. 223, 227.
Harper v. *Cunningham*, 8 App. D. C. 430, 439.
Macfarland v. *Saunders*, 25 App. D. C. 438, 441.

It is immaterial that the void decree is that of an appellate court rather than a court of original jurisdiction. In *Hickey* v. *Stewart*, 3 How. 750, this Court declared void for lack of jurisdiction a judgment of the Supreme Court of the State of Mississippi. In *Ex Parte Crenshaw*, 15 Pet. 119, this Court set aside, for lack of jurisdiction over the parties, its own judgment and mandate rendered at a previous term on appeal from a United States Circuit Court, the appellee never having been served with citation on appeal.

2. It is the duty of the court which entered a void judgment to vacate and set it aside on motion or application by the party against whom it was rendered.

Ex Parte Crenshaw, supra.

United States v. *Rothstein*, 187 Fed. 268.

Mossew v. *United States*, 266 Fed. 18.

Morse v. *United States to the use of Hine*, 29 App. D. C. 433.

Crane v. *Barry*, 47 Ga. 476.

City of Olney v. *Harvey*, 50 Ill. 453.

Hervey & Co. v. *Edmunds*, 68 N. C. 243.

Mills & Co. v. *Dickinson & Mills*, 6 Rich. Law (S. C.) 487.

Cooley's "Constitutional Limitations," 7th Ed., p. 576.

I Freeman on Judgments, 5th Ed., Sec. 273.

I Black on Judgments, 2nd Ed., Secs. 303, 318.

3. A decree denying an application for leave to intervene is final.

Stich v. *Dickinson*, 38 Cal. 608.
People v. *Pfeiffer*, 59 Cal. 89.
Henry v. *Travelers' Insurance Co.*, 16 Colo. 179.
Rollins v. *Rollins*, 76 N. C. 264.
Schlieder v. *Martinez*, 38 La. Ann. 847.
Harman v. *Barhydt*, 20 Neb. 625.
Bass v. *Fontleroy*, 11 Tex. 698.

4. When such a decree is entered in an antitrust suit in equity brought by the United States, it is within Section 2 of the Expediting Act, and can be appealed only to this Court. This is the result of the express language of Section 2, which refers to final decrees in such suits without qualification or discrimination.

It is immaterial that the decree does not finally dispose of the issues of the principal suit. *Swift & Company* v. *United States*, 276 U. S. 311. In that case the final decree in question passed only on certain jurisdictional questions concerning the earlier decrees which did dispose of the issues in the principal suit—questions which depended for their determination, not upon the statutory antitrust laws, but upon general principles of court jurisdiction. This Court held, nevertheless, that the Court of Appeals had no jurisdiction over the appeals from the final decree in question; and the effect of its decision is that no test can be read into the

Expediting Act whereby part of the final decrees therein generally referred to can be excluded from its meaning. No adequate selection can be made on the basis of what the decree decides. The Act concerns appeals, and if any particular test of finality is to be used, it must be finality for purposes of appeal.

It is likewise immaterial that the decree appealed from was entered upon the application of an intervener. It was nevertheless a final decree in the principal suit. The public interest is bound up with the principal suit, and it was the purpose of the Expediting Act to advance that public interest by enabling the earlier final determination of the suit and the effective enforcement of its decrees. Anything that interferes with that object is within the spirit of the Act, and, if also within its letter, should not be excluded from its meaning. It will certainly interfere with the expeditious progress of antitrust litigation if third party interveners may stay its course while dragging through intermediate appellate courts the final decrees entered in determination of their rights. For if such decrees are not within the Expediting Act, there is no law requiring priority to be given to their determination. The importance of such expedition seems most persuasively illustrated by the six years' litigation that have resulted in this case from the Canneries' application to intervene, including the sus-

pension in toto of the operation of the consent decree of 1920, and with it the entire loss to the Government of the fruits of the principal suit.

Continental Insurance Co. v. *United States*, 259 U. S. 156, is in point. Certain insurance companies had come in as interveners to protect their interests as minority stockholders in the dissolution of the Reading Company in execution of a mandate of this Court in *United States* v. *Reading Company* 253 U. S. 26. The lower court entered a decree adjudicating the rights of these interveners. They took appeals to this Court. In the *Insurance Company case, supra*, these appeals were entertained and determined, the Court expressly recognizing at the beginning of its opinion (p. 165) that they came up under the Expediting Act.

5. Substantial relief to the Government depends upon the reversal of the Court of Appeals' judgment of May 18, 1928.

The decree of the Supreme Court of the District of Columbia of May 8, 1923, denying the Canneries' application to intervene was final. (See paragraph 3, *supra*.) A court has no power to alter or set aside its final judgments or decrees after the expiration of the term at which they were entered, except for jurisdictional invalidity and certain formal defects not here involved. *Bank of United States* v. *Moss*, 6 How. 31; *Ex Parte Sibbald* v. *United States*, 12 Pet. 488; *Bronson* v. *Schulten*, 104 U. S. 410; *Phillips* v. *Negley*, 117 U. S. 665; *United States*

v. *Mayer*, 235 U. S. 55. By the lower court's decree of May 8, 1923, therefore, its denial of the Canneries' right to intervene in this suit became *res judicata;* and until the receipt of the Court of Appeals' mandate of June 20, 1924, the lower court had no jurisdiction or authority to alter or set aside that decree or to take any other proceedings not in harmony with it.

The Court of Appeals' mandate directed further proceedings in the Supreme Court below to determine the issues raised in the Canneries' intervention. In the course of those proceedings the latter court, by its order of May 1, 1925, suspended the consent decree of 1920, pending further litigation. As above explained, these proceedings rested solely upon the authority of the Court of Appeals' judgment and mandate; and if the latter are invalid for lack of jurisdiction, the proceedings under them are void, and it is useless to carry them further. The order of suspension, being a part of them, is likewise void, and must fall with them. Thus, the consent decree of 1920 heretofore held valid by this Court, will then be restored to operative effect and rendered enforceable by the Government and by the courts.

CONCLUSION

For these reasons it is respectfully submitted that the Court of Appeals' judgment of May 28, 1928, should be reversed, and that its judgment and

mandate of 1924 should be vacated and set aside as void for want of jurisdiction.

WILLIAM D. MITCHELL,
Solicitor General.
WILLIAM J. DONOVAN,
The Assistant to the Attorney General.
H. B. TEEGARDEN,
Special Assistant to the Attorney General.

NOVEMBER, 1928.

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No. 5.

In the Supreme Court of the United States

OCTOBER TERM, 1923

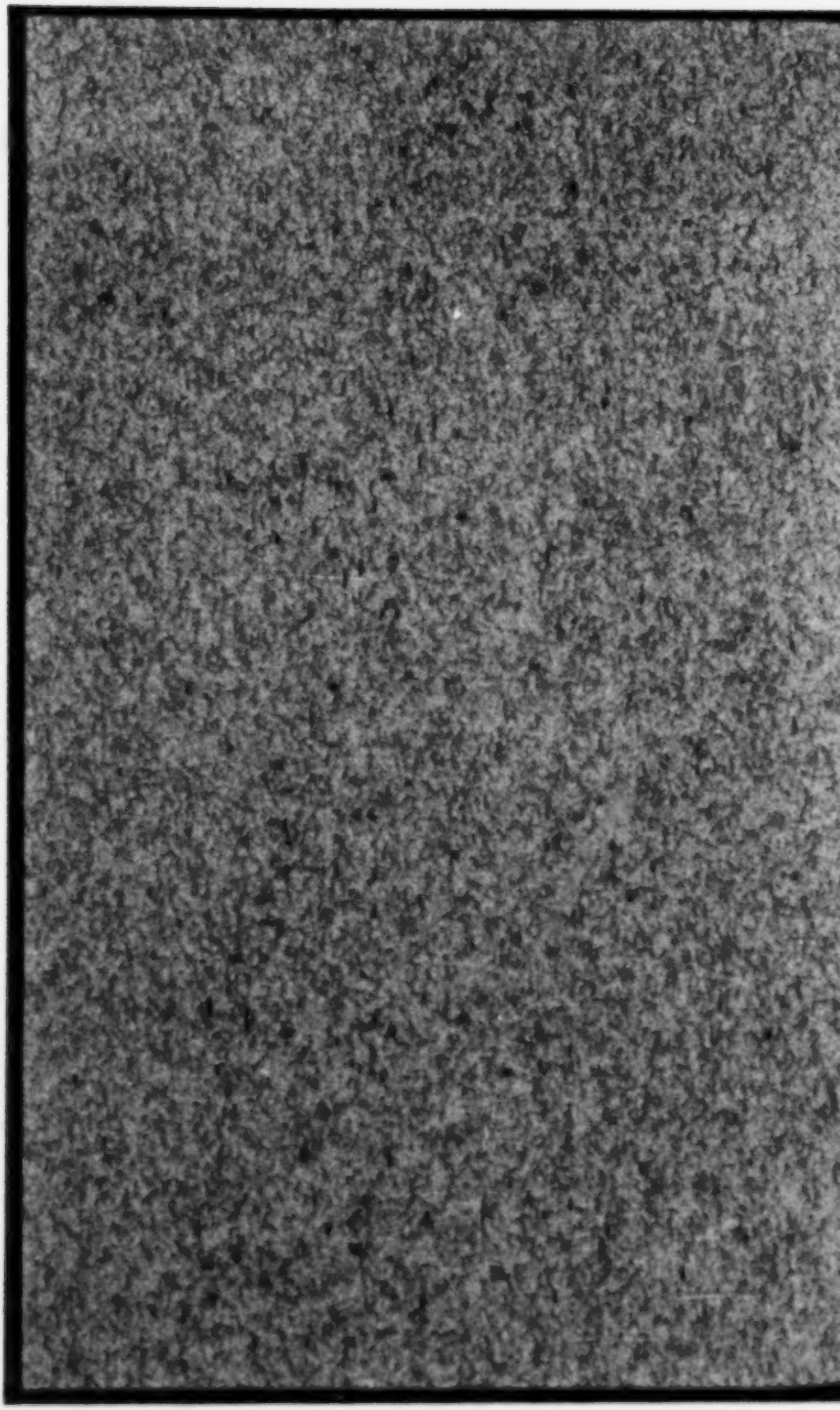
UNITED STATES OF AMERICA, *Petitioner*,

v.

CALIFORNIA COOPERATIVE CANNERIES.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

FRANK J. HENNAH,
Counsel for Respondent,
California Cooperative Canneries.



INDEX.

Page

SUBJECT-MATTER

Foreword—Statement of proceedings 1-5
Government's postulate is erroneous 5-6
Government's petition is too late 6
Intervention order was not "the final decree" meant by Expediting Act 6-7
Intervention order was sufficiently final to support appeal to Court of Appeals 7
Definition of "the final decree" meant by the Expediting Act 7-13
No appeal was taken from order allowing intervention 13-14
Trial court had power to pass intervention order 14-15
No expediting proceedings were ever taken ..15-16
Court of Appeals had jurisdiction of Canneries' Appeal 16-17
Exception to rule that power of Court ceases with term 17
Canneries' appeal during term was sufficient to retain power of Court 17-18
Jurisdiction was also retained by final consent decree 18-20
Conclusion 20

CITATIONS

Arnold v. United States, 263 U. S. 427 7
B. & O. Ry. Co. v. I. C. C., 215 U. S. 216 17
California Cooperative Canneries v. United States, 55 App. D. C. 36 ..... 2, 4, 7
Continental Insurance Co. v. United States, 259 U. S. 156 ..... 9, 12, 13
District of Columbia v. Brewer, 32 App. D. C. 388 13
Gilbert v. Endowment Association, 15 App. D. C. 40 ..... 7, 14
Gilbert v. Endowment Association, 173 U. S. 701 14

Page

Harper v. Cunningham, 8 App. D. C. 430 16
Jelke v. Emery, 214 N. W. 369 4
Keatley v. Furey, 226 U. S. 399 12
King v. Harrington, 35 App. D. C. 111 .....7, 13
Rudolph v. Potomac Electric Power Co., 24 Fed. (2d) 882 11
Schwartz v. Costello, 11 App. D. C. 553 .....7, 13
Scotten v. Littlefield, 235 U. S. 407 13
Southern Pac. T. Co. v. I. C. C., 166 Fed. 134 .. 9
Swift & Co. v. United States, —U. S. — 1, 10, 15
Tenney v. Taylor, 1 App. D. C. 223 16
United States v. Corbett, 215 U. S. 233 18
United States v. L. S. & M. S. Ry. Co., 5 Fed. (2d) 240 19-20
United States v. Terminal Railroad Association, 236 U. S. 205-206 4

In the

Supreme Court of the United States

OCTOBER TERM, 1928

No. 375.

UNITED STATES OF AMERICA, *Petitioner*

v.

CALIFORNIA COOPERATIVE CANNERIES.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

February 27, 1920, the Supreme Court of the District of Columbia entered the Packers' consent decree in the case of *United States v. Swift, et al.*

In 1921 the California Cooperative Canneries sought to have the Government, through the Department of Justice, with the Packers' consent, and with the approval of the Supreme Court of the District of Columbia, which had expressly reserved jurdisdiction in the decree, enter a modification order which would avoid the destruction of the business of the California Cooperative Canneries and permit

the Packers lawfully to engage in a lawful business.

In September and November, 1921, two Wholesale Grocers' Associations obtained leave to intervene in the cause for the express purpose of opposing the modification sought by the California Cooperative Canneries.

Thereupon, in 1922, the California Cooperative Canneries petitioned for leave to intervene, which was denied by order of the Supreme Court of the District of Columbia of May 8, 1923.

The California Cooperative Canneries prosecuted an appeal from that order to the Court of Appeals of the District of Columbia. On that appeal the Canneries and the Government and the Grocers' Associations were heard on briefs and oral arguments. No question as to the jurisdiction of the Court of Appeals was made by either the Government or by the Grocers' Associations. June 2, 1924, the Court of Appeals reversed the Supreme Court of the District of Columbia and ordered that the California Cooperative Canneries be allowed to intervene, and that such further proceedings thereupon be had as are necessary to determine the issues raised by the Canneries' petition (*California Cooperative Canneries v. United States*, 55 App. D. C. 36, 40; 299 Fed. Rep. 908, 914). No appeal from that decision of the Court of Appeals was taken to this Court or sought.

September 13, 1924, the Supreme Court of the District of Columbia entered an order granting the petition of the Canneries for leave to intervene, and directing that such further proceedings shall be had

as are necessary to determine the issues raised by the said petition. When that order was entered, no appeal was pending in the suit in any court. From that order, the Government took no appeal.

The Government, after some preliminary motions, filed its answer to the Canneries' petition, on the merits, early in 1925.

May 1, 1925, the Supreme Court of the District of Columbia entered an order, on motion of the Canneries, suspending the operation of the consent decree until a hearing be had upon the issues raised by the Canneries' petition and the Government's answer thereto. The Government insisted that the suspension should operate upon the consent decree as a whole, and the order of May 1, 1925, was so made because of the disposition of the Government.

Thereupon the Government prosecuted an appeal from the suspending order, not to this Court, but to the Court of Appeals of the District of Columbia. That appeal was, in due time, dismissed because of the failure of the Government to comply with the provisions of the rules of the Court of Appeals. The Government sought no action in this Court to review either (a) the suspending order of May 1, 1925, entered in the Supreme Court of the District of Columbia, or (b) the action of the Court of Appeals in dismissing the Government's appeal from that suspending order.

Thus stood the case between the Canneries and the Government until after the decision of this Court in *Swift & Company v. United States* of March 19, 1928, whereupon the Government, for the first time,

filed a motion in the Court of Appeals asking that Court to vacate its decision and judgment of June 2, 1924, and its mandate thereon of June 20, 1924. The Court of Appeals denied this motion on May 18, 1928, nearly four years after the decision sought to be vacated.

On the ground that "expedition" in such matters is vitally important, the Government now seeks to have this Court review a decision rendered June 2, 1924, in a case in which it raised no question of jurisdiction.

The Canneries' petition (record 185) alleges—and we expect to prove—that the Government's suit against the Packers was instigated and aided by the Grocers (and they so assert—record 132) in order to protect their industry from competition with the Packers and the Canneries, and that the effect of the consent decree was to complete a monopoly already partially possessed by the Grocers—even if it destroyed an alleged monopoly of the Packers. Neither the Courts nor the Congress could constitutionally do this (see *United States v. Terminal Railroad Association*, 236 U. S. *loc. cit.* 205-206; *Jelke v. Emery* (Wisconsin), 214 N. W. 369, also reported and annotated in 53 A. L. R. 463, 474; *California Cooperative Canneries v. United States*, 55 App. D. C. *loc. cit.* 40, also reported in 289 Fed. Rep. *loc. cit.* 914).

In its brief (page 11) the Government says that—"Substantial relief to the Government depends upon the granting of this petition and the reversal of the Court of Appeals' judgment of May 19, 1928." As

the issues have been made up in the trial Court on the merits between the Government and the Canneries, the Grocers and the Canneries, and the Packers and the Canneries, and the case stands ready for trial at any time the Government chooses to proceed, we think that the relief sought by the Government does not depend upon the granting of its petition for certiorari and the reversal of the judgment of the Court of Appeals of May 18, 1928, but can be promptly secured, if entitled thereto, by the hearing on the merits already provided for in the Supreme Court of the District of Columbia. The Government has never taken any steps to expedite the hearing on the petition of the Canneries, but, so far, has devoted most of its efforts to preventing such a hearing.

The petition of the United States for the writ of certiorari to vacate the decision, decree, and mandate of the Court of Appeals of the District of Columbia, is based upon an erroneous postulate. Because this Court has decided that the order of the Supreme Court of the District of Columbia of May 1, 1925, overruling the motion of the Swift and Armour groups of defendants to vacate the final decree of February 27, 1920, disposing of the case in that Court, was within Section 2 of the Expediting Act, the Government concludes that the natural consequence is that the order of the Supreme Court of the District of Columbia of May 8, 1923, denying leave to the Canneries to intervene for the protection of its special interests in the subject-matter of the suit, is also within Section 2 of the Expediting Act. This conclusion is a *non sequitur*. The motions of the

Packers to vacate the final decree were in effect appeals from that decree, and therefore came within the Expediting Act. The petition of the Canneries for leave to intervene was merely a request to be let into the cause for the purpose of securing an opportunity to be heard in support of its rights under its contract with Armour & Company. The denial of its petition prevented the Canneries from becoming a party to, or actor in, the suit, and left it without any standing to question the final decree in the slightest respect. The order denying leave to intervene did not affect the final decree either as to its merits or otherwise. It was from *this order* that the Canneries, prosecuted the appeal, the decision in which is now sought to be vacated.

After the mandate of the Court of Appeals went down, the lower Court, by order of September 13, 1924, vacated its order of May 8, 1923, granted the petition of the Canneries for leave to intervene, and directed that "such further proceedings shall be added herein as are necessary to determine the issue raised by the said petition." When the order of September 13, 1924, was entered, no appeal was pending in the suit in any court.

Thereafter, the Government, Packers, and Grocers, filed their answers to the petition on the merits, issues of fact were created, and the matter stands for hearing in the trial Court. The Government's present petition therefore comes too late.

The Government says that the order denying the Canneries leave to intervene was a final decree in the suit, and that, as it was a final decree, the Court of

Appeals had no jurisdiction of the Canneries' appeal, by reason of the provisions of Section 2 of the Expediting Act. This conclusion is incorrect. An order or a decree, which finally disposes of a collateral matter in the pending suit, may be final for the purpose of appeal, without being final in the strict technical sense of the term (*Arnold v. United States*, 263 U. S. 427, 434). It is quite certain, we think, that the order denying leave to intervene was not "the final decree" meant by the Expediting Act. The order denying leave to intervene was, however, sufficiently final to sustain the appeal (*Schwartz v. Costello*, 11 App. D. C. 553; *King v. Harrington*, 35 App. D. C. 111; *California Cooperative Canneries v. United States*, 55 App. D. C. 36), but whether it was final or not, that Court had jurisdiction (*Gilbert v. Endowment Association*, 15 App. D. C. 40). We believe that "the final decree," covered by the Expediting Act, is such as is defined in *Arnold v. United States, supra*, as follows: (434)

> "It is well settled that a case may not be brought here by writ of error or appeal in fragments; that to be reviewable a judgment or decree must be not only final, but complete, that is, final not only as to the parties, but as to the whole subject-matter and as to all the causes of action involved; and that if the judgment or decree be not thus final and complete, the writ of error or appeal must be dismissed for want of jurisdiction. *Hohorst v. Packet* Co., 148 U. S. 262, 264; *Collins v. Miller*, 252 U. S. 364, 370; *Oneida Navigation Corporation v. Job*, 262 U. S. 521, 522; and cases therein cited."

If, therefore, the Canneries had taken a direct appeal to this Court, from the order of May 8, 1923, denying it leave to intervene, its appeal, we fancy, would have been dismissed for want of jurisdiction.

Section 1 of the Expediting Act speaks of "the judgment, order, or decree finally disposing of" the case in the trial Court. Section 2 provides that "an appeal from the final decree of the Circuit Court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof * * *." (This was the wording of the Expediting Act at the time of the entry of the order denying intervention. The language has since been slightly changed, probably to clarify the meaning of the statute.) The statute, in the most explicit terms, contemplates only the decree finally disposing of the case in the trial Court. The order of May 8, 1923, denying the Canneries leave to intervene, was certainly not an order or decree finally disposing of the case, and did not at all affect the merits of the suit, but merely disposed of the collateral phase presented by the application for leave to intervene. Undoubtedly, the consent decree of February 27, 1920, was the decree which finally disposed of the case in the trial Court. That decree was passed more than three years prior to the order denying leave to intervene.

In the many anti-trust suits which have been filed by the United States, hundreds upon hundreds of orders and decrees, sufficiently final to support appeals to intermediate appellate courts, have been entered. It is and has been the policy of Congress to relieve this Court as much as possible, by restricting

its appellate jurisdiction, and it is therefore inconceivable that the Expediting Act was intended to give direct appeals as matter of right from every such order or decree. The Expediting Act means exactly what it says, when it expressly confines its scope to the decrees finally disposing of the suits. As said by the three Judges in *Southern Pacific Terminal Company v. Interstate Commerce Commission,* 166 Fed. 134, 135-136, the Expediting Act, fairly construed, permits the case to proceed in the usual way (except it is to be given precedence and expedited) until final hearing, when it is to be set down before three Circuit Judges, and after the final decree, it may be carried within sixty days by appeal to the Supreme Court by either party, and that "to apply it to all proceedings in the case is, in the nature of things, to defeat the very object of the Act, and change it from an expediting act into a hindering and delaying act." In *Continental Insurance Company v. United States,* 259 U. S. 156 (cited by the Government on page 11 of its brief in support of its petition), this Court uses the following language: "In one of the phases of a case reported as *United States v. Lake Shore & M. S. Ry. Co.,* 203 Fed. 295, the Court of Appeals of the Sixth Circuit was obliged to consider, on an intervening petition, the question of the power of the Court under the Sherman Act to deal with a mortgage * * *."

This Court then quotes approvingly from a certified copy of the memorandum opinion of the Court below. (In the Court of Appeals of the District of Columbia, the Government asserted that the mem-

orandum opinion was not that of the Circuit Court of Appeals for the Sixth Circuit, but was the opinion of the trial Court. However that may be, this Court would not have used the foregoing language unless it was of opinion that a Circuit Court of Appeals, or the Court of Appeals of the District of Columbia, has jurisdiction to consider, on an intervening petition, such an exceedingly important question as was involved in that case.) If this is true, it is quite certain that the Court of Appeals of the District of Columbia had jurisdiction to entertain the appeal from the order denying the Canneries leave to intervene. Moreover, in its opinion in *Swift & Company v. United States*, decided March 19, 1928, but not yet officially reported, this Court says that "three intervening petitions were filed—that of the Southern Wholesale Grocers Association, allowed September 10, 1921; that of the National Wholesale Grocers Association, allowed November 5, 1921; and that of the California Cooperative Canneries, allowed September 13, 1924, see 289 Fed. 908." The order of September 13, 1924, was entered after the mandate of the Court of Appeals went down, and 289 Fed. 908 is a reference to the opinion of the Court of Appeals reversing the order of May 8, 1923, denying the Canneries leave to intervene. From the language just quoted, it is apparent that this Court was of opinion that the Court of Appeals had jurisdiction over the appeal from the order denying leave to intervene—at least, that was assumed to be so.

The Government cites no case in which an unsuccessful applicant for leave to intervene took a direct

appeal to this Court under the Expediting Act, and we have not been able to find any such case in which this Court sustained the right to maintain such a direct appeal. Owing to the vast and complicated interests involved in anti-trust suits, and the many parties concerned therein, applications for leave to intervene are very numerous. Many have been granted and some have been denied. If a direct appeal lies as of right to this Court from an order granting or denying leave to intervene, it is strange that we can find no case in the books in which this Court sustained the right to take and maintain such an appeal. However, apart from the power to entertain applications for leave to intervene, Section 5 of the Anti-Trust Act authorizes the Court to bring in additional parties if the ends of justice so require.

The Expediting Act itself affords a conclusive answer to the Government's application for certiorari without considering the decision showing the nature of the final decrees which have been reviewed on direct appeals under the Expediting Act. The question of statutory construction can best be adduced by reference to the provisions of the Expediting Act itself (*Rudolph v. Potomac Electric Power Company*, 24 Fed. (2d) 882).

The Expediting Act applies only to final decrees on the merits of the whole case, and to such final supplemental or subsequent decrees that directly affect the merits of the original final decrees. The statute contemplates only final decrees on the merits in the strict technical sense of the term. An order granting or denying leave to intervene decides noth-

ing either on the merits of the case or on the merits of the petition for intervention, but merely shuts or opens the door of the Court to a hearing on the merits as set up in the intervening petition. Until allowed to intervene, the applicant is a mere stranger to the suit, and for this reason it could not have taken a direct appeal to this Court from the order denying intervention, and such an appeal, if taken, would have been dismissed for want of jurisdiction. There could not be any final decree on the merits of the intervening petition, unless and until the Canneries was allowed to intervene, and until such a final decree on the merits was entered, it could not be determined whether it was within or without the Expediting Act. Only parties to anti-trust suits, and not strangers, can take direct appeals to this Court under the Expediting Act. Until a stranger secures a standing, he cannot be heard on the question of jurisdiction or any other matter (see *Keatley v. Furey*, 226 U. S. 399, 403).

Recurring to the case of *Continental Insurance Company v. United States*, 259 U. S. 156: That was a suit instituted by the Government under the anti-trust acts. In the District Court, certain minority stockholders were permitted to intervene. The final decree entered in that case adjudicated the rights of the interveners, and it was not appealed by the Government or by the defendants, but was appealed by the interveners. The final decree which was entered in the District Court, and from which the interveners prosecuted their appeal, was entered upon a prior mandate of this Court. Upon the appeal thus prose-

cuted by the interveners, and which, we repeat, involved the merits of the final decree in an anti-trust suit, this Court, in the case cited, reviewed the decree. It is obvious that the case would be in point if the Supreme Court of the District of Columbia, after hearing the merits of the intervening petition of the Canneries, should enter a final order or decree vacating or materially modifying the consent decree of February 27, 1920, which finally disposed of the whole case in that Court. Whether a direct appeal to this Court would lie from such an order or decree in such an event, is not the question, because that is not this case in its present posture. It is to be noted that in *Continental Insurance Company v. United States*, no appeal was taken from the order of the District Court allowing the intervention.

The recent decision of this Court on the Packers' appeal from the order denying their motions to vacate the final consent decree of February 27, 1920, even if applicable to the pending petition, would not be determinative of it, since those appeals concern the Packers and the Government, but not the Canneries (see *District of Columbia v. Brewer*, 32 App. D. C. 388; *Scotten v. Littlefield*, 235 U. S. 407).

The order of September 13, 1924, allowing the Canneries to intervene, was the order of the trial Court, and not of the Court of Appeals. That order was final for the purpose of appeal (see *Schwartz v. Costello*, 11 App. D. C. 553; *King v. Harrington*, 35 App. D. C. 111), but no appeal from it was taken by the Government or the Grocers or the Packers either to this Court or to the Court of Appeals, and the

time for such appeal has long since passed. If the Government be right in its present contention concerning the lack of jurisdiction of the Court of Appeals to entertain the appeal of the Canneries, because the order denying intervention was within the Expediting Act, then it must follow that the Government had a right of direct appeal to this Court from the order allowing intervention. That order is still in full force and effect, and cannot now be vacated. The Court of Appeals, in *Gilbert v. Endowment Association*, 15 App. D. C. 40, entertained an appeal from a decree of the Supreme Court of the District of Columbia that was thought to be final. Subsequently, however, this Court held that the decree was not final (*Gilbert v. Washington Beneficial Endowment Association*, 173 U. S. 701) and when the mandate of this Court was received by the Court of Appeals, a motion was made to vacate its decree, to which the Court replied (page 42) that "it is not apparent that it would serve any good purpose to vacate the decree of this Court." Of course, if the decree of the Court of Appeals, now assailed by the Government, be not void for want of jurisdiction, it cannot now be vacated any more than the order for intervention can be set aside, because of the expirations of the terms during which they were entered.

Undoubtedly, the trial Court had jurisdiction to entertain the Canneries' petition for leave to intervene, and to grant or deny it. That Court first denied such leave, and then granted it. Even if the decision and mandate of the Court of Appeals be void for want of jurisdiction, and therefore merely de-

claratory and not obligatory, but the trial Court yielded to the persuasiveness of the reasoning in the opinion of the Court of Appeals, in passing the order granting the Canneries leave to intervene, the validity of that order would not be affected. Both the Court of Appeals and the trial Court get their jurisdiction and power from the organic statutes creating them, and neither can add to nor take from the jurisdiction or power of the other. A wrong reason for a right order allowing intervention does not make such order either void or voidable, if otherwise within the jurisdiction of the court.

In *Swift v. United States, supra*, neither the order allowing intervention nor the suspending order was before this Court, or considered in the opinion, although the order allowing intervention was mentioned in stating the case. No appeal was taken from the intervention order, as we have stated. Special appeals from the suspending order were prayed by the Government and by the Grocers, but were denied, and thereupon they took general appeals therefrom, which were dismissed on motion of the Canneries. No appeals in this case are pending in this Court or in the Court of Appeals, and the time limits therefore have long since expired.

No proceedings to expedite this case were ever taken in the trial court, under the provisions of Section 1 of the Expediting Act, but the first time the Government invoked the statute was on its motion in the Court of Appeals, to dismiss for want of jurisdiction the Packers' appeal from the order of the trial Court overruling their motion to vacate the

consent decree, which finally disposed of the case in the latter Court. Until the filing of the Government's motion in the Court of Appeals, no objection to the jurisdiction of the Court of Appeals to entertain the Canneries' appeal was made by the Government or the Grocers or the Packers. No one thought that the Court of Appeals was without jurisdiction. When the Government and the Grocers came to appeal from the suspending order, they took their appeals to the Court of Appeals and not to this Court. Undoubtedly they were of opinion that the order denying intervention and the suspending order were not within the Expediting Act, and that appeals therefrom would lie only to the Court of Appeals. The motion to vacate in the Court of Appeals was an afterthought, suggested but not supported by the decision of this Court on the Packers' appeal.

If the order for intervention and the suspending order are final, the Court below cannot vacate them, whether the Court of Appeals was right or wrong in overruling the Government's motion. If the decree of the Court of Appeals be void for want of jurisdiction, the Government is under no obligation to take any direct steps for its cancellation (*Tenney v. Taylor*, 1 App. D. C. 223, 227; *Harper v. Cunningham*, 8 App. D. C. 430, 438), and the Court of Appeals is not required to vacate it.

We think, however, that the decree of the Court of Appeals is not void. It was entered in a case clearly within the jurisdiction of that Court, and on an appeal which did not fall within the Expediting Act, and could not have been taken to this Court.

In *Baltimore & Ohio R. R. Co. v. Interstate Commerce Commission*, 215 U. S. 216, this Court held that the provisions of the Expediting Act do not authorize the trial Court to send up the whole case to this Court, and further held that this Court will not consider a case "in which no final judgment or decree or order determinative of the merits was rendered." Certainly, the order of the Supreme Court of the District of Columbia, denying the Canneries leave to intervene, was not only not determinative of the merits of the case of the Government against the Packers, but in no way affected the final decree of February 27, 1920, theretofore entered in the case, and determinative of its merits. The case last cited is therefore in point, and compels a denial of the pending petition for certiorari. A different situation may be presented when and if there is any further order of the trial Court determinative of the merits of the main case, or affecting, by material modification or by vacating in whole or in some substantial part, the final decree on the merits.

In its brief (page 12) the Government says that the order of the trial Court of May 8, 1923, denying the Canneries' application to intervene, was final, and then says that a court has no power to alter or set aside its final judgments or decrees after the expiration of the term at which they were entered, except for jurisdictional invalidity and certain formal defects not here involved. To this familiar rule, the principal exception is not stated, which is that such power continues if appropriate proceedings have been taken during the term. The Canneries' appeal

was taken and perfected during the term. If the trial Court's power ceased at the end of the term, then it never could be restored by the Court of Appeals, because that which has perished cannot be revived. The power of the trial Court was not destroyed, but was merely suspended. In addition, the power of the trial Court was preserved by the eighteenth section of the consent decree (record 129), providing as follows:

> "Eighteenth. That jurisdiction of this cause be, and is hereby retained by this Court for the purpose of taking such other action or adding at the foot of this decree such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of this decree and for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree."

The Canneries is one of the "parties" within the meaning of that word as used in the decree, by reason of the fact that it has been admitted to the suit as a party, and not as a mere *amicus curiae* to make suggestions. The reservation of jurisdiction of the cause is in all-embracing terms—"for the purpose of entertaining at any time hereafter any application which the parties may make with respect to this decree." (See *United States v. Corbett*, 215 U. S. 233, 241.)

The retention of jurisdiction for the purpose of entertaining "at any time hereafter any application" which the parties may make with respect to

the decree, would seem to have been used in the broadest sense for the express purpose of excluding the possibility of the contention now made by the Government, namely, that the jurisdiction and power of the trial Court to allow the Canneries to intervene, and to suspend temporarily the operation of the decree, ceased at the close of the term at which each was passed. The retaining clause of the decree is directed to two separate and distinct purposes,—(1) for the purpose of taking such other action, or adding such other relief, if any, as may become necessary or appropriate for the carrying out and enforcement of the decree, and, (2) for the purpose of entertaining at any time thereafter any application which the parties might make with respect to the decree. The first purpose is purely administrative, while the second contemplates vacating, modifying, or suspending the decree itself. The decree clearly indicates that it was at least expected, if not intended, that it might become necessary to vacate, modify, or suspend it, and for this reason the second purpose was included. The whole case, and every order and decree, were so completely retained within the jurisdiction of the Court, that we do not think that it can reasonably be said that the order denying intervention was excluded. In *United States v. Lake Shore & M. S. Ry. Co.*, 5 Fed. (2d) 240, an anti-trust suit, the final decree contained a retention of jurisdiction, and the Court held it to continue until the combination was completely dissolved. The Court said (241):

> "* * * Jurisdiction of the cause was expressly retained by the decree for the purpose of making such other and further orders and decrees as might be necessary to the due execution of the decree of 1914, and the complete dissolution of the combination condemned thereby.
>
> "* * * Under that retention, orders have been made from time to time, as deemed necessary, to effectuate dissolution."

We therefore respectfully submit, (1) that the Supreme Court of the District of Columbia retained jurisdiction over the order of May 8, 1923, denying the Canneries' application for leave to intervene; (2) that the Court of Appeals of the District of Columbia had jurisdiction of the Canneries' appeal from the order of May 8, 1923; (3) that the trial Court had power to enter the suspending order; (4) that the Court of Appeals was right in denying the Government's motion to vacate; and (5) that the Government's present petition for the writ of certiorari should be denied.

FRANK J. HOGAN,
Counsel for Respondent,
California Cooperative Canneries.

Washington, D. C.,
August 27, 1928.

Office Supreme Court, U. S.
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No. 375

In the Supreme Court of the United States

OCTOBER TERM, 1923

UNITED STATES OF AMERICA, *petitioner*,

v.

CALIFORNIA COOPERATIVE CANNERIES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENT

FRANK J. HOGAN,
Counsel for Respondent.

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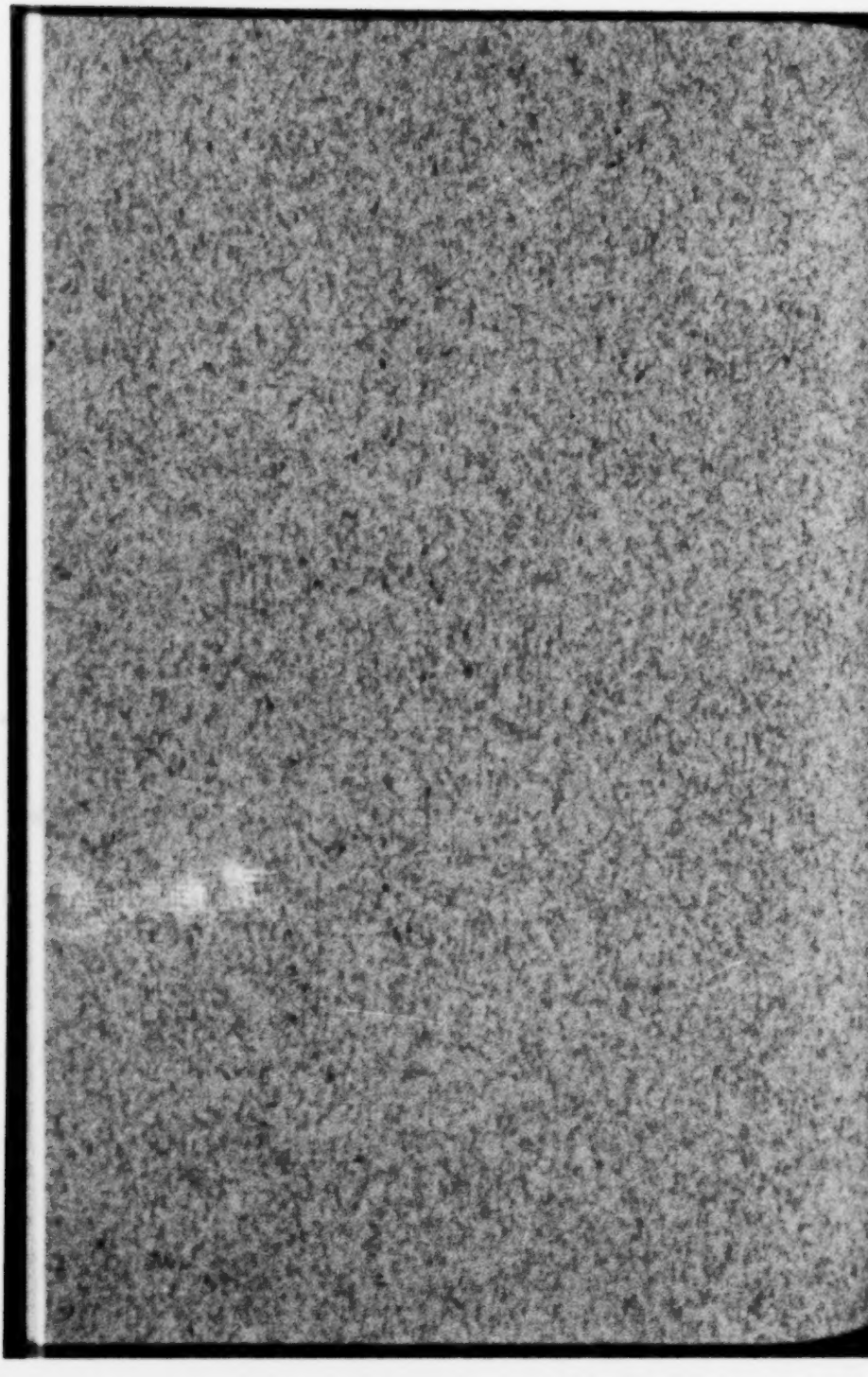

INDEX.

SUBJECT-MATTER:

	Page
Statement of case	1
Question presented	3
Appeal was within jurisdiction of Court of Appeals	3
Appeal was not from final decree in suit in which United States was complainant, but from an order denying leave to a third party to intervene in a suit in which United States was complainant	5
The respondent was not a party to the anti-trust suit wherein the United States is complainant	16
The final decree appealable to this Court under the Expediting Act must dispose of the merits of the case wherein the United States is complainant	20
Conclusion	26

CITATIONS:

Arnold v. United States, 263 U. S. 427	21
B. & O. R. R. Co. v. Interstate Commerce Commission, 215 U. S., 216	22
Bayard v. Lombard, 9 How. 530	16
California Cooperative Canneries v. United States, 55 App. D. C. 36	2
Continental Insurance Co. v. United States, 259 U. S. 156	18, 20, 23
Corpus Juris, Vol. 3, 477-478	24
District of Columbia Code, Sec. 226	3
Ex parte Crockcroft, 104 U. S. 578	17
Ex parte Jordan, 94 U. S. 248	18
Expediting Act of Feb. 11, 1903	6, 7
Gilbert v. Endowment Association, 10 App. D. C. 316	4

Page

Gilbert v. Washington Beneficial Endowment Association, 173 U. S. 701 4
Gilbert v. Endowment Association, 15 App. D. C. 40 4
Harmon v. Bashydt, 20 Neb. 625 14
Henry v. Travelers Ins. Co., 16 Colo. 179 13
Indiana Southern R. R. Co. and William H. Guion v. Liverpool, London & Globe Insurance Co., 109 U. S. 168 17
In re Leaf Tobacco Board of Trade, 222 U. S. 578 ..... 18, 24
In re Michigan Central Railroad Company, 124 Fed. 727 18
Keatley v. Furey, 226 U. S. 309 ..... 23, 25
Note 123 A. S. R. 280 14
People v. Pfeiffer, 59 Cal. 89 12
Rudolph v. Potomac Electric Power Co., 24 Fed (2d) 882 22
Southern Pac. Terminal Co. v. Interstate Commerce Commission, 166 Fed. 134 21
Stich v. Dickinson, 38 Cal. 608 11
Swift & Co. v. United States, 276 U. S. 311 ..... 1, 25
United States v. Swift & Co., et al., 276 U. S. 311 .. 1, 25
Voorhees v. Indianapolis Car and Manufacturing Co., 140 Ind. 220; 39 N. E. 738 8
Williams v. Morgan, 111 U. S., 684 18

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UNITED STATES OF AMERICA, *Petitioner*,

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CALIFORNIA COOPERATIVE CANNERIES

ON WRIT OF CETIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR RESPONDENT

STATEMENT OF CASE

This is a writ of certiorari to the Court of Appeals of the District of Columbia to review an order (R 321) of that Court of May 18, 1928, denying motion (R. 317) of the United States of April 24, 1928, asking that Court to vacate its decree (R. 315) of June 2, 1924, and mandate (R. 315-317) of June 20, 1924, reversing an order (R. 304) of the Supreme Court of the District of Columbia of May 8, 1923, denying the motion (R. 147) of the California Cooperative Canneries for leave to intervene in the suit of the *United States v. Swift & Company*, and others, Equity No. 37623 (see 276 U. S. 311).

The Government's motion to vacate was not filed until about four years after the Court of Appeals had finally disposed of the Canneries appeal, and was based solely upon a suggestion of want of jurisdiction over that appeal. No appeal was taken from the decree of reversal. The opinion of the Court of Appeals appears in 55 App. D. C. 36, and in 299 Fed. 914. It also appears in this record (R. 308-314).

February 27, 1920, the United States, as complainant, in the Supreme Court of the District of Columbia, filed a suit in equity No. 37623, under the anti-trust laws, against Swift & Company, Armour & Company, Morris & Company, Wilson & Company, Cudahy Packing Company, and others, alleging violation of such laws, and praying for injunction (R. 1-17). On the same date, by consent, a final decree (R. 118-129) was entered against the defendants, reserving jurisdiction of the cause (R. 129, top). After various unsuccessful efforts on the part of the California Cooperative Canneries to get the Government to ask the court to vacate or modify the decree, the Canneries, on April 19, 1922, filed its motion (R. 147) for leave to intervene. By order (R. 304) of May 8, 1923, this motion was denied, and the Canneries appealed to the Court of Appeals of the District of Columbia. The appeal was heard by that Court without any suggestion on the part of the Government or any other appellee as to want of jurisdiction, and on June 2, 1924, that Court reversed the order appealed (R. 315) and the mandate (R. 315-317) went down on June 20, 1924.

QUESTION PRESENTED

The sole question presented to this Court is whether the Court of Appeals of the District of Columbia had jurisdiction to entertain an appeal from an order of the Supreme Court of the District of Columbia denying the motion of the California Cooperative Canneries for leave to intervene in a suit in equity filed by the United States under the anti-trust laws.

APPEAL WAS WITHIN JURISDICTION OF COURT OF APPEALS

The jurisdiction of the Court of Appeals is defined by Section 226 of the Code of Law for the District of Columbia, which reads as follows:

> Any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals; and upon such appeal the Court of Appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. Appeals shall also be allowed to said court of appeals from all interlocutory orders of the Supreme Court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving writs of attachment, and the like; and *also from any other interlocutory order, in the discretion of the said court of appeals*, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal.

The Court of Appeals therefore has jurisdiction over (1) any final order, judgment, or decree, (2) all interlocutory orders whereby the possession of property is changed or affected, and (3) any other interlocutory order, in the court's discretion, when it will be in the interest of justice to allow such appeal. (In practice, such appeal (3) is called a special appeal. Criminal cases are now excluded.)

We contend that the order appealed, denying leave to the Canneries to intervene, was final only as to its right to intervene in the suit in equity "wherein the United States is complainant," and Swift & Co. and others are defendants; and an appeal from such order was within the jurisdiction of the Court of Appeals of the District of Columbia under Sec. 226 of the Code, *supra*.

In *Gilbert* v. *Endowment Association*, 10 App. D. C. 316, the Court of Appeals entertained an appeal from a decree of the Supreme Court of the District of Columbia that was thought to be final. Subsequently, however, this Court held that the decree was not final (*Gilbert* v. *Washington Beneficial Endowment Association*, 173 U. S. 701; 43 L. Ed. 1185), and when the mandate of this Court was received by the Court of Appeals, a motion was made to vacate its decree, but was overruled in *Gilbert* v. *Endowment Association*, 15 App. D. C. 40, in which that Court said (41-42):

> The appellate jurisdiction of this court has not the same limitations as that of the Supreme Court of the United States. The right of review of the latter is limited to the final judgments and decrees of the subordinate tribunals; the jurisdiction of the Court of Appeals of the District of Columbia with reference to the Supreme Court of

> this District is very much broader; for it extends to various interlocutory orders and decrees specifically, and to any and all interlocutory orders from which this court upon petition might allow an appeal. Whether the decree of the Supreme Court of the District in this cause from which the appeal to this Court was taken is contained in the classes of interlocutory orders specifically enumerated, it is unnecessary to determine; since we are of the opinion that, even if the decree appealed from was merely interlocutory and not final, the hearing of the cause by this court as upon a final decree was the equivalent of the allowance of an appeal upon the theory that the decree was only of an interlocutory character.

It is therefore plain that the Court of Appeals had jurisdiction of the Canneries appeal from the order of the lower court denying the motion for leave to intervene, unless its jurisdiction had perished under some other law in force when that Court entertained the appeal.

APPEAL WAS NOT FROM FINAL DECREE IN SUIT IN WHICH UNITED STATES WAS COMPLAINANT, BUT FROM AN ORDER DENYING LEAVE TO A THIRD PARTY TO INTERVENE IN A SUIT IN WHICH UNITED STATES WAS COMPLAINANT

The Government contends that an appeal from an order denying leave to a third party (a stranger to the record) to intervene and become a party to an anti-trust case, in which the United States is complainant, is appealable only to the Supreme Court under the Expediting Act; that therefore the Court of Ap-

peals of the District of Columbia had no jurisdiction of the Canneries appeal and its mandate is void.

The Expediting Act of February 11, 1903 (32 St. L. 823), as amended by the Act of June 29, 1910 (36 St. L. 854), provides:

> "That in any suit in equity pending or hereafter brought in any circuit court of the United States under the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety, 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said court, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be equally divided in opinion as to the decision or disposi-

tion of said cause, or in the event that a majority of said judges shall be unable to agree upon the *judgment, order, or decree finally disposing of said case* in said court which should be entered in said cause, then they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the clerk of the district court in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof * * *.

Section 2 of the Act reads as follows:

"Sec. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said Acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from *the final decree* of the circuit court will lie only to the Supreme Court, and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this Act takes effect, the case shall proceed to a *final decree* therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law."

The Expediting Act therefore requires that the decree, to support a direct appeal to this court, (1) must be in a suit under the anti trust laws, (2) must be in a

suit in which the United States is the complainant, and (3) must be final.

Section 1 of the Act speaks of "the judgment, order, or decree finally disposing of" the case, and Section 2 defines such decree as "the final decree" of the Circuit, now District Court. The Government, accordingly, must establish that the order of the Supreme Court of the District of Columbia, denying the Canneries' motion for leave to intervene, met all of these requirements of the Expediting Act. We do not think that the order met any of them.

The Government's contention is based upon a misconception of what the Canneries appeal involved. It was not an appeal from the consent decree in the suit of the *United States v. Swift & Company*. Had it been so, it would have been dismissed by the Court, because the Canneries was not a party to that suit or that decree. The appeal was from the order denying its motion for leave to intervene in that suit, wherein the United States was the complainant and Swift & Company and others were the defendants. For the purpose of the appeal, the order was sufficiently final as to the Canneries to sustain the appeal to the Court of Appeals under Section 226 of the Code, *supra*, but not to sustain a direct appeal to this Court under the Expediting Act.

In *Voorhees v. Indianapolis Car and Manufacturing Co.*, 140 Ind. 220; 39 N. E. 738, the Court said:

> The errors assigned here are (1) that the superior court, in general term, erred in overruling the motion to dismiss the appeal to the general term; (2) in overruling the application and motion of appellant to be permitted to introduce evidence in support of his plea in the nature of a plea *puis darrein* continuance, and in declining to hear evidence in support of said plea, and refus-

ing to rule upon said plea; and (3) in reversing the order and judgment of the court in special term.

In support of the first specification, it is contended that the order appealed from was neither a final judgment nor such an interlocutory order as that an appeal is authorized therefrom. The only interlocutory orders from which an appeal is authorized by the statute generally are: First, for the payment of money to compel the execution of any instrument of writing, or the delivery or assignment of any securities, evidences of debt, documents, or things in action; second, for the delivery of the possession of real property or the sale thereof; third, granting or dissolving, or overruling motions to dissolve, an injunction in term, and granting an injunction in vacation; and, fourth, orders and judgments upon writs of habeas corpus made in term or vacation. Burns' Rev. St. 1894, Sec. 658 (Rev. St. 1881, Sec. 646.) The order in question was not an interlocutory one, within the meaning of these provisions; and, if it was an interlocutory order at all, we know of no other provision of law authorizing an appeal from it. An interlocutory order appointing, or refusing to appoint, a receiver, may be appealed from within 10 days thereafter. 1 Burns' Rev. St. 1894, Sec. 1245 (Rev. St. 1881, Sec. 1231). But this is not such an order. In all other cases an appeal lies generally only from a final judgment. Burns' Rev. St. 1894, Sec. 644 (Rev. St. 1881, Sec. 632). A final judgment, within the meaning of this section, is defined to be such a judgment or order as makes a final disposition of the case. *Covey v. Neff*, 63 Ind. 392; *Hill v. Shannon*, 68 Ind. 470; *Matter v. Campbell*, 71 Ind. 512; *Reese v. Beck*, 9 Ind. 238; *Davis v. Davis*, 36 Ind. 160; *Northcutt v. Buckles*, 60 Ind. 577; *Taylor v. Board*, 120 Ind. 121, 22 N. E. 108; *Champ v. Kenerick*, 130 Ind. 545, 30 N. E., 635; *Thomas v.*

Railway Co. (Ind. Sup.) 39 N. E. 44, and authorities cited; *Elliott, App. Proc.*, Sections 83-85, and authorities cited.

It is objected to the right of appeal from the order denying the petition that such petitioner, the rolling mill, was not a party to the action of Voorhees and the appointment of the receiver, because the court had refused to make it such in the denial of the petition, and hence, being a stranger to the record, it could not appeal. But this contention is based on a misconception of what it is that the Rolling Mill was appealing from. The record clearly shows that it was not appealing or trying to appeal from Voorhees' judgment against the car company. If it had so appealed, or tried so to appeal, its effort should have been properly met by a dismissal of such appeal or attempted appeal. It also clearly appears that the Rolling Mill was not appealing, or attempting to appeal, from the order appointing the receiver. Such an appeal would have been equally unavailing. But the Rolling Mill was appealing from the action of the special term on its petition asking to be allowed to intervene in the proceedings resulting in the appointment of the receiver for the alleged purpose of better protecting the interests of itself, a creditor of the Car Company, together with all other general creditors of the insolvent Car Company. It can hardly be said that the Car Company was not a party to its own petition of intervention, or that it was not a party to the order of the special term denying its petition. It was a party to the petition and order thereon, within the meaning of the law requiring, as a prerequisite to the right of appeal, that the party invoking such right must be a party to the order or judgment appealed from.

The order or judgment appealed from was one that made a final disposition of the case made by

> the petition. It disposed of all the rights therein sought to be asserted and enforced, not temporarily, but for all time to come. It made an end of those rights. That brings the case within the authorities as to what is such a final judgment as that an appeal may be had therefrom.

On page 9 of its brief, the Government maintains that "a decree denying an application for leave to intervene is final," and in support of this contention seven State cases are cited, but no reference is made to any of the federal cases on the subject. The State cases cited by the Government go no further than to hold that a decree denying an application for leave to intervene is final, for the purpose of appeal, only as to the would-be intervenor but nobody else.

An examination of the Government's brief, and the State cases therein cited, shows that the Government is laboring under the same misapprehension as to the Canneries appeal as was the appellee in the *Voorhees* case. The Government does not quote from the State cases cited, but assumes that the order denying the Canneries motion for leave to intervene was a final decree in the suit in which the United States was complainant. The cases cited by the Government do not show that the order denying leave to intervene was a final decree in the original suit by the Government against the Packers, but, on the contrary, they do show that it was final as to the Canneries, and that the Canneries could appeal therefrom; and they further show that the appeal must be from the order denying intervention, and not from the final decree in the original suit.

In *Stich* v. *Dickinson*, 38 Cal. 608, 609-10 (cited by the Government), the Court says:

The plaintiff, Stich, claims to be the owner of a note and mortgage made by the defendant, Dickinson, to one Jordan, since deceased, and prays for a judgment of foreclosure and sale. The defendant, in his answer, denies that the plaintiff is the owner of the note and mortgage, or that he has any interest therein, and sets up other defenses. Goldner filed an intervention, as administrator of Jordon, in which he denies that Stich has or ever had any title to or interest in the note and mortgage, which he avers belonged to Jordon at the time of his death, and to which the intervenor is entitled as his administrator; and he prays for a foreclosure of the mortgage and a sale of the property for the benefit of Jordon's estate. The defendants demurred to the intervention on the ground, among others, that it does not state facts which entitle the intervenor to intervene, inasmuch as it does not show that the intervenor has any interest in the matter in litigation, in the success of either of the parties, or against both or all of them. The demurrer was sustained and a judgment was thereupon entered against the intervenor, from which judgment he prosecutes this appeal.

The respondents claim that the appeal is premature, there having been no final judgment in the action as between the original parties to it. But this position is not tenable. There has been a final judgment against the intervenor, and no judgment can hereafter be entered as to him. So far as he is concerned, the judgment is final, and ended the litigation in that Court.

In *People* v. *Pfeiffer*, 59 Cal. 89, 90 (cited by the Government), the Court says:

Neither the appellant nor his intestate was a party to the proceedings for the condemnation

of the lands and springs of water thereon, which were commenced for the benefit of the University of California, etc., under an Act of the Legislature entitled * * *. The only relation which either of them had to the proceedings was this: Several weeks after the Commissioner appointed by the Court had appraised the value of the springs and lands described in the complaint and had filed their report, the appellants, as administrators of the estate of Jose Domingo Peralta, deceased, made application for leave to intervene in the proceedings. The court made an *ex parte* order permitting him to present and file a complaint in intervention, but subsequently, after filing the complaint, set aside the order, refused to allow him to intervene, and dismissed his complaint. From the judgment of dismissal the appellant took no appeal, as he might have done (*Stich* v. *Goldner*, 38 Cal. 610); but after the Court had confirmed the report of the valuation by the Commissioners, and entered a judgment of condemnation between the parties to the proceedings, pursuant to the provision of the statute, he prosecuted this appeal from that judgment.

A proceeding to condemn land for a public purpose is a special proceeding, from the final judgment in which an appeal may be taken by any party aggrieved. But a party aggrieved means a party to the action or one prejudiced by the judgment. The appellant was not a party to the action in the Court below, because his suit to be made a party was rejected, nor was he injured by the judgment. And what he claims to have been a final judgment was not a judgment against him. He was neither a party nor privity to it. It did not affect his rights; and he was in no way prejudiced by it.

In *Henry* v. *Travelers Ins. Co.*, 16 Colo. 179, 184 (cited by the Government), the Court says:

> It is insisted that there is no final judgment in this case to which a writ of error will lie. This objection is not tenable. Upon the entry of the judgment or order denying Henry's application to intervene, the cause was finally determined as to him; and unless he be entitled to a writ of error from this court, he is precluded from any review of such judgment.

In *Harmon* v. *Bashydt*, 20 Neb. 625 (cited by the Government), suit was brought to foreclose a mortgage. Harmon filed an application to intervene claiming to be the holder of two of the notes secured by the mortgage. The Court says (p. 630):

> On the 30th of April, 1886, the court overruled the application of Harmon to intervene, to which he excepted, and now brings the cause into this court by petition in error. The attorneys for Bashydt claim that as there is no final order and that a judgment has not been rendered in the action, this proceeding in error is premature. An order in the progress of an action, to be final, must be such as determines the action and prevents a judgment. An order affecting a substantial right, made in a special proceeding, is a final order. * * * So in the case at bar, Harmon had some interest in the goods in question and some right to the possession apparently. The extent of that right is a question for the jury; but sufficient was shown *prima facie* to entitle him to intervene.

The foregoing citations by the Government appear in a comprehensive note in 123 A. S. R. 280-314, on the subject of intervention, reading in part as follows (313-314):

> If the application for leave to intervene is

denied, the order of denial does not terminate the action or proceeding, and in that sense is not final, and it has been hence held not to be subject to appeal under statutes allowing appeals from final judgments only: *Fairthorne* v. *Wigginton*, 11 B. Mon. 368; *Bennett* v. *Whitcomb*, 25 Minn. 148 *Greenwalt* v. *Natrona I. Co.* (Wyo.), 92 Pac. 1008; *Lewis* v. *Baltimore & L. R. Co.*, 62 Fed. 218, 10 C. C. A. 446. The refusal of leave to file a complaint of intervention or the striking it out, or sustaining a demurrer to it after it is filed, though it does not terminate the action or proceeding or dispose of it as between the original parties, does effectually terminate it as to the intervenor or applicant, and, as to him, it is a final judgment or order. He may, therefore, appeal and prosecute a writ of error without waiting for any further disposition of the case; *Stitch* v. *Dickinson*, 38 Cal. 608; *People* v. *Pfeiffer*, 59 Cal. 89; *Henry* v. *Travelers' Ins. Co.*, 16 Col. 179, 26 Pac. 318; *Schlieder* v. *Martinez*, 38 La. Ann. 847; *Harman* v. *Bashydt*, 30 Neb. 236, 46 N. W. 489; *Rollins* v. *Rollins*, 76 N. C. 264; *Loven* v. *Parson*, 127 N. C. 301, 37 S. E. 271; *Bass* v. *Fontleroy*, 11 Tex. 698, ante, VI. In truth, it would appear that he must appeal from that order or he cannot appeal at all, for after he has been excluded from the case by the final action of the court on his application or petition, he is not a party to the action and cannot appeal from a final judgment entered between those who are parties: *People* v. *Pfeiffer*, 59 Cal. 89; *Lorber* v. *Connor*, 82 Iowa, 739, 47 N. W. 1006.

The cases cited point out the distinction between an order denying leave to a third party to intervene in a suit, and a final decree in the suit between the original parties thereto; they also show that such an order is final only as to the potential intervenor and

nobody else; that therefore the order denying leave to the Canneries to intervene (R. 304) is not a final decree in the suit against the Packers, "wherein the United States is complainant;" and is not appealable directly to this Court under the Expediting Act. In the proceeding by which the Canneries moved for leave to intervene, the Canneries was the complainant, and not the United States, as we have already stated, and though the order denying the motion is sufficiently final to support an appeal by the Canneries, it is not final as to anybody else, and, particularly, it is not a final order, judgment, or decree, disposing of the whole anti-trust suit, as required by the Expediting Act.

THE RESPONDENT WAS NOT A PARTY TO THE ANTI-TRUST SUIT WHEREIN THE UNITED STATES IS COMPLAINANT

The Government's contention amounts to this: That Respondent's appeal from the order denying leave to become a party was from a final decree in the suit in equity to which Respondent was not a party. This amounts to the claim that one not a complainant or defendant in a suit can appeal from a final decree in the suit. The error in this position is pointed out in *Voorhees* v. *Indianapolis Car & Mfg. Co., supra.*

It is certainly good law that one who is a stranger and not a party to a suit, cannot appeal from a final decree in such suit. In *Bayard* v. *Lombard*, 9 How. 530, this Court said (551):

> It is a well settled maxim of the law, that "no person can bring a writ of error to reverse a judgment who is not a party or privy to the record." * * * The judgment or order of the court on

> a summary motion, or a collateral question arising like the present on the suggestion of a third party, is not re-examinable on a writ of error issued on the judgment with which it may happen to be connected.

In *Indiana Southern Railroad Company and William H. Guion* v. *Liverpool, London & Globe Insurance Company*, 109 U. S. 168, the Court said (173):

> The petition of Guion was for leave to appeal from a decree in a suit to which he was not a party. We decided in *Ex parte Cutting*, 94 U. S. 14, that such an appeal could not be taken. He had applied for leave to become a party, but this leave was not given. So he is not a party to the decree from which he appeals. * * *

In *Ex parte Cockcroft*, 104 U. S. 578, the petitioner asked this Court for a writ of mandamus requiring a Circuit Court to allow an appeal by him from an order of the court confirming the sale of a railroad. The petitioner was not a party to the suit, nor did it appear that he ever asked to be made a party. He was not the holder of any of the bonds which, by the decree under which the sale was made, were entitled to a distributive share of the proceeds. He was evidently heard as a matter of favor, and not because he had any right to intervene. In denying his petition, this Court said (579):

> Inasmuch, therefore, as the petitioner was not a party to the suit, either by an express order of the court to that effect, or being treated as such, his application for an appeal was properly denied.

> This case cannot be distinguished in principle from that of *Ex parte Cutting*, 94 U. S. 14.

In the case of *In re Leaf Tobacco Board of Trade*, 222 U. S. 578, the petitioner asked for a writ of mandamus to compel the court below to permit him to intervene and appeal. In denying his petition, this Court said (580):

> One who is not a party to a record and judgment is not entitled to appeal therefrom.

It is equally well settled that after one has been permitted to intervene, he becomes a party to the suit, and can appeal from the final decree. *Ex parte Jordan*, 94 U. S. 248; *Williams v. Morgan*, 111 U. S. 684; *Continental Insurance Company v. United States*, 259 U. S. 156 (cited by the Government on page 11 of its brief); *In Re Michigan Central Railroad Company*, 124 Fed. 727 (C. C. A.). In the case last cited, the Court said (730):

> The appeal in this case should have been allowed. It may be that the Michigan Central Railroad Company was not originally a party to the foreclosure suit of the Farmers' Loan & Trust Company against the Detroit & Bay City Railroad Company. That it subsequently became a party by intervention for the purpose of obtaining relief in respect of a part of the purchase price of the railroad sold under the decree in that cause is undeniable. Under that intervention the petitioner made the bond and gave the collateral security out of which has grown the clerk's claim for the compensation adjudged by the decree complained of. The proceeding thus grafted upon the old foreclosure suit constituted a properly related ancillary suit, the parties to which were the peti-

tioner and the Farmers' Loan & Trust Company. In the course of the execution of the orders and decrees made in that intervention the clerk of the court claimed to have been entitled to certain costs and commissions, which he asserted by his own subintervention, and to which he made the petitioner a party. It is therefore not the case of an effort to appeal from a decree by a stranger whose application to intervene had been denied, as in *Ex parte Cutting*, 94 U. S. 14, 24 L. Ed. 49, but the case of one who had become a party for the purpose of the intervention, and who had been treated as such for more than 20 years. In respect of any matter within the scope of the intervention the petitioner had thereby become an actor, with liberty to present its contention and obtain an adjudication, and a consequent right to have whatever was done reviewed by this court if the matter was one in its nature appealable. *Ex parte Jordan*, 94 U. S. 248, 24 L. Ed. 123; *Hamlin v. Toledo, etc., R. Co.*, 78 Fed. 664, 24 C. C. A. 271, 36 L. R. A. 826; *Williams v. Morgan*, 111 U. S. 684, 699, 4 Sup. Ct. 638, 28 L. Ed. 559.

We repeat that the Canneries was a stranger to the suit of the Government against the Packers, and remained such, in that its motion for leave to intervene was denied and not granted. Its case was separate from that of the United States against the Packers. This the Government recognizes by entitling this certiorari proceeding, *The United States of America, Petitioner, vs. California Cooperative Canneries.* There are no parties to it except the United States and the Canneries. It involves nothing but the complaint of the Canneries against the order denying its motion for leave to intervene. Only one party to the anti-trust suit is a party to this proceeding, namely, the United States.

With respect to *Continental Insurance Company v. United States*, 239 U. S. 156, which the Government cites in support of its contention that a direct appeal to this Court would lie, under the Expediting Act, from the order denying the Canneries motion for leave to intervene, the Government fails to note that in that case the interventions were granted, that the intervenors thereby became parties to and actors in the suit with the same right of appeal as any other party thereto, and that the merits of their claims were adjudicated by the final decree of the court. Here, however, the Canneries motion for leave to intervene was denied, it never became a party to the suit, and the merits of its claims were not adjudicated. The case of *Continental Insurance Company v. United States* is therefore the exact contrary of the Canneries case. If, in that case, the motions for leave to intervene had been denied, and the potential intervenors had taken direct appeals to this Court, under the Expediting Act, from the orders denying leave to intervene, a totally different question would have been presented.

THE FINAL DECREE APPEALABLE TO THIS COURT UNDER THE EXPEDITING ACT MUST DISPOSE OF THE MERITS OF THE CASE WHEREIN THE UNITED STATES IS COMPLAINANT

A direct appeal to this court, under the Expediting Act, is governed by a statute radically different in its provisions from that controlling appeals from the Supreme Court of the District of Columbia to the Court of Appeals of the District of Columbia. A final order, judgment, or decree, to be covered by the Expediting

Act, must be such as is defined in *Arnold* v. *United States*, 263 U. S. 427, 434, as follows:

> It is well settled that a case may not be brought here by writ of error or appeal in fragments; that to be reviewable a judgment or decree must be not only final, but complete, that is, final not only as to the parties, but as to the whole subject-matter and as to all the causes of action involved; and that if the judgment or decree be not thus final and complete, the writ of error or appeal must be dismissed for want of jurisdiction. *Hohorst* v. *Packet Co.*, 148 U. S. 262, 264; *Collins* v. *Miller*, 252 U. S. 364, 370; *Oneida Navigation Corporation* v. *Job*, 262 U. S. 521, 522; and cases therein cited.

It is and has been the policy of Congress to relieve this Court as much as possible, by restricting its appellate jurisdiction, and it is therefore inconceivable that the Expediting Act was intended to give direct appeals as matter of right from every order or decree. The Expediting Act means exactly what it says, when it expressly confines its scope to the decrees finally disposing of the suits. As said by the three Judges in *Southern Pacific Terminal Company* v. *Interstate Commerce Commission*, 166 Fed. 134, 135-136, the Expediting Act, fairly construed, permits the case to proceed in the usual way (except it is to be given precedence and expedited) until final hearing, when it is to be set down before three Circuit Judges, and after the final decree, it may be carried within sixty days by appeal to the Supreme Court by either party, and that "to apply it to all proceedings in the case is, in the nature of things, to defeat the very object of the Act, and change it from an expediting act into a hindering and delaying act."

In *Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Commission*, 215 U. S. 216, this Court held that the provisions of the Expediting Act do not authorize the trial Court to send up the whole case to this Court, and further held that this Court will not consider a case "in which no final judgment or decree or order determinative of the merits was rendered." Certainly, the order of the Supreme Court of the District of Columbia, denying the Canneries leave to intervene, was not only not determinative of the merits of the case of the Government against the Packers, but in no way affected the final decree.

The Government cites no case in which an unsuccessful applicant for leave to intervene took a direct appeal to this Court under the Expediting Act, and we have not been able to find any such case in which this Court sustained the right to maintain such a direct appeal. Owing to the vast and complicated interests involved in anti-trust suits, and the many parties concerned therein, applications for leave to intervene are numerous. Some have been granted and some have been denied. If a direct appeal lies as of right to this Court from every order denying leave to intervene, it is strange that we can find no case in the books in which this Court sustained the right to take and maintain such an appeal.

The Expediting Act itself affords a conclusive answer to the Government's contentions without considering the decisions showing the nature of the final decrees which have been reviewed on direct appeals under the Expediting Act. The question of statutory construction can best be adduced by reference to the provisions of the Expediting Act itself (*Rudolph* v. *Potomac Electric Power Company*, 24 Fed. (2d) 882).

The Expediting Act applies only to final decrees on the merits of the whole case, and to such final supplemental or subsequent decrees that directly affect the merits of the original final decrees. The statute contemplates only final decrees on the merits in the strict technical sense of the term. An order denying leave to intervene decides nothing either on the merits of the case or on the merits of the petition for intervention, but merely shuts or opens the doors of the Court to a hearing on the merits as set up in the intervening petition. Until allowed to intervene, the applicant is a mere stranger to the suit, and for this reason the Canneries could not have taken a direct appeal to this Court from the order denying intervention, and such an appeal, if taken, would have been dismissed for want of jurisdiction. There could not be any final decree on the merits of the intervening petition, unless and until the Canneries was allowed to intervene, and until such a final decree on the merits was entered, it could not be determined whether it was within or without the Expediting Act. Only parties to anti-trust suits, and not strangers, can take direct appeals to this Court under the Expediting Act. Until a stranger secures a standing, he cannot be heard on the question of jurisdiction or any other matter (see *Keatley* v. *Furey*, 226 U. S. 399, 403).

Recurring to the case of *Continental Insurance Company* v. *United States*, 259 U. S. 156: That was a suit instituted by the Government under the anti-trust acts. In the District Court, certain minority stockholders were permitted to intervene. The final decree entered in that case adjudicated the rights of

the interveners, and it was not appealed by the Government or by the defendants, but was appealed by the interveners. The final decree which was entered in the District Court, and from which the interveners prosecuted their appeal, was entered upon a prior mandate of this Court. Upon the appeal thus prosecuted by the interveners, and which, we repeat, involved the merits of the final decree in an anti-trust suit, this Court, in the case cited, reviewed the decree.

In re Leaf Tobacco Board of Trade, 222 U. S. 578, the petitioner asked a writ of mandamus to compel the court below to permit him to intervene in the anti-trust suit of *United States* v. *American Tobacco Co.*, 221 U. S. 106. In denying his petition, this Court said (580):

> The action of the court below in refusing to permit the movers to become parties to the record is not susceptible of being reviewed by this court *on appeal*, or indirectly, under the circumstances here disclosed, by the writ of mandamus. *Ex parte Cutting*, 94 U. S. 15, 24 L. Ed. 49; and see *Credits Commutation Co.* v. *United States*, 177 U. S. 311, 44 L. Ed. 782, 20 Sup. Ct. Rep. 636.

In 3 C. J. 477-478, it is said:

> In the absence of special statutory provision an interlocutory or discretionary order or decree permitting or refusing to permit intervention in the cause is not appealable. Such orders, however, are appealable in some states under statutes allowing appeals from interlocutory orders or decrees involving the merits of the action or some part thereof, or other special provisions of the statute covering such cases. And it is generally held that the final denial or overruling of a peti-

> tion or application to intervene is a final judgment or order so far as the petitioner or applicant is concerned, and therefore subject to appeal or writ of error by him, unless it is within the discretion of the court, so as to come within the rule precluding an appeal or writ of error to review a discretionary order or decree.

In *Keatley* v. *Furey*, 226 U. S. 399, an intervening petition was dismissed on its merits, and the petitioner appealed directly to this Court. In dismissing the appeal, this Court said (404):

> Right or wrong, that was the decision of the circuit court, and it is obvious that a dismissal of the petition on that ground does not warrant a direct appeal, whether the court had jurisdiction or not. The court had jurisdiction over the intervention and decided against it on the merits. That question logically and chronologically preceded any question of jurisdiction in the principal case. The question of jurisdiction in the principal case was not yet open, as there had been no final decree therein, and as, by virtue of the decision that the intervener had no standing, the question could not be raised by him. * * *

The recent decision of this Court (*Swift & Company* v. *United States*, 276 U. S. 311) on the Packers appeal from the order of the Supreme Court of the District of Columbia denying their motions to vacate the final consent decree of February 27, 1920, is not in point here. Those motions were made by original parties to and in the anti-trust suit, and sought to put an end to the final decree and the whole case. This Court held that such motions came within the clause of the decree (R. 129) retaining jurisdiction to entertain any applications by the parties in respect to the decree.

The sole question presented to this Court is the jurisdiction of the Court of Appeals of the District of Columbia over the Canneries appeal. In its brief, the Government refers to certain orders entered by the Supreme Court of the District of Columbia *subsequent* to the mandate (R. 315-317) of the Court of Appeals, but as any questions concerning such orders are not properly before this Court, we do not discuss them in this brief.

CONCLUSION

We therefore respectfully submit, (1) that the Court of Appeals of the District of Columbia had jurisdiction of the Canneries' appeal from the order of May 8, 1923; (2) that the Court of Appeals was right in denying the Government's motion to vacate; (3) that the writ of certiorari should be dismissed as improvidently granted; or (4) that the order of the Court of Appeals denying the Government's motion to vacate should be affirmed.

FRANK J. HOGAN,
Counsel for Respondent.

Washington, D. C.,
February 25, 1929.

FILED
APR 18 1929

No. 575

In the Supreme Court of the United States

OCTOBER TERM, 1928

UNITED STATES OF AMERICA, *Petitioner*,

v.

CALIFORNIA COOPERATIVE CANNERIES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

RESPONDENT'S MEMORANDUM REPLY TO BRIEF OF NATIONAL WHOLESALE GROCERS' ASSOCIATION.

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Washington, D. C.,
April 10, 1929.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

In the
Supreme Court of the United States

OCTOBER TERM, 1928

No. 375

UNITED STATES OF AMERICA, *Petitioner*,

v.

CALIFORNIA COOPERATIVE CANNERIES

RESPONDENT'S MEMORANDUM REPLY TO BRIEF OF NATIONAL WHOLESALE GROCERS' ASSOCIATION.

In so far as the Grocers' brief ties to the single question presented in this proceeding, it is pertinent, but in so far as it strays from the record, and seeks to incorporate, by quotations, matters extraneous, it is not helpful.

The Grocers say that two questions are presented, namely, (1) technical, and (2) practical. But one question is presented, and that is the technical question of law. There is no practical question before this

Court. The only question for decision relates to the jurisdiction of the Court of Appeals of the District of Columbia over the Canneries appeal from the order of the trial court denying leave to intervene. The Grocers are at pains to inject into this record the so-called suspending order, by quoting it in their brief, and by reference to the record in another case which was before this Court. The so-called suspending order does not appear in this record, and was properly omitted. That order was not entered until about one year after the Court of Appeals had finally disposed of the Canneries appeal. The order was that of the trial court, and not of the Court of Appeals.

The jurisdiction of the Court of Appeals certainly cannot be tested by some order passed by the trial court long after the Court of Appeals had disposed of the matter. The so-called suspending order is not, therefore, before this Court for any proper purpose whatsoever.

The Grocers assertion that the Canneries is the only party interested in the so-called suspending order, entirely overlooks the numerous defendants to the bill in the main cause, all of whom were and are very vitally concerned in and affected by it.

Continental Insurance Company v. United States, 259 U. S. 156, cited by the Grocers, is sufficiently considered on pages 18, 20, and 23 of our brief.

Terminal Railroad Association v. United States, 266 U. S. 17, also cited by the Grocers, is not in point. That case involved a direct question as to the scope of a final decree in an anti-trust suit. It presented a final adjudication in contempt. The District Court held that the acts of the alleged contemptors violated the decree as construed by that Court, but this Court con-

strued the decree otherwise, and reversed the contempt adjudication. Such adjudication was final. *Cogen v. United States*, 278 U. S. 221.

The Grocers also cite *Interstate Commerce Commission v. Baird*, 194 U. S. 25, but their quotation from that opinion clearly shows that it is not in point on the single question involved in this proceeding.

The suggestion of the Grocers and the Government that the Canneries' contract expired January 1, 1929, is immaterial. The contract was in force when the Court of Appeals entertained the appeal of the Canneries, and the question is to be considered as of that time and not of this. The only parties to this proceeding are the United States and the Canneries. If we pass beyond the single question involved, then all of the defendants to the main suit are entitled to be heard. In addition, the jurisdiction of the Court of Appeals does not depend upon the existence or non-existence of a private contract. The question presented is one of jurisdiction and not of power.

Respectfully submitted,

FRANK J. HOGAN,
NELSON T. HARTSON,
Counsel for Respondent.

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF IN BEHALF OF NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES, INTERVENER.

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INDEX.

	PAGE
Intervener's status	1
Technical and practical questions presented	2
Connection of California Cooperative Canneries with suit	2
Suspension of consent decree and subsequent proceedings	5

POINTS:

I. Under the Expediting Act the appeal of the Canneries from the decree denying its motion for leave to intervene lay "only to the Supreme Court", and, as the Court of Appeals of the District of Columbia had no jurisdiction of that appeal, its decree therein was null and void 8

II. The decree of the District Court of Appeals refusing to vacate its previous decree, by virtue of which the Canneries was enabled to intervene and secure the suspension of the consent decree, should be reversed, and the previous decree should be declared void and of no effect 11

Citations.

PAGE

Cases:

Continental Co. *v.* United States, 259 U. S. 157, 164 9

Corrigan *v.* Buckley, 271 U. S. 323 5

Hodgson *v.* Vroom, 266 Fed. 267 5

Interstate Commerce Commission *v.* Baird, 194 U. S. 25 10

Swift & Co. *v.* United States, 276 U. S. 311 ..... 2, 8

Terminal R. R. Assoc. *v.* United States, 266 U. S. 17 9

Statutes, etc.:

Act of February 19, 1903 (U. S. Code, title 49, §§43-45) 10

Hearings on Meat Packer Legislation, Series D., Part I, p. 105 3

Packers Consent Decree Hearings before Subcommittee of the Committee on Agriculture and Forestry, U. S. Senate, 67th Congress, March 23 and April 21, 1922 3

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CALIFORNIA CO-OPERATIVE CANNERIES.

BRIEF IN BEHALF OF NATIONAL WHOLESALE GROCERS' ASSOCIATION OF THE UNITED STATES, INTERVENER.

Intervener's Status.

By an order of the Supreme Court of the District of Columbia dated November 5, 1921, National Wholesale Grocers' Association of the United States was granted leave to intervene in this suit for the purpose of being "heard in opposition to any proposed change in the consent decree which would deprive the interveners of the protection now secured by said decree" (R. 145). Since that time this intervener has actively cooperated in the Government's efforts to sustain said decree and to restore it to effective operation.

Technical and Practical Questions Presented.

On March 19, 1928, this court decided that the Packers' Consent Decree was valid and binding, and that the Court of Appeals of the District of Columbia had no jurisdiction of an appeal from a decree of the District Supreme Court denying a motion by the Armour and Swift defendants to vacate said consent decree (*Swift & Co.* v. *United States*, 276 U. S. 311).

The technical question now before the Court is: Did the Court of Appeals of the District of Columbia have jurisdiction of an appeal from a decree of the District Supreme Court, entered in the same suit, denying the application of California Co-operative Canneries, a stranger to the suit, for leave to intervene for the purpose of moving to vacate said consent decree?

The practical question is how most expeditiously to restore operative effect to the consent decree, which this court has held to be valid, and which stands out as the one real accomplishment of the Government in its forty years of effort to compel the Packers to comply with the Anti-Trust Law.

Connection of California Co-operative Canneries With Suit.

The only party openly resisting the attempt of the Government to reanimate the consent decree is the intervener, California Co-operative Canneries (hereinafter called the Canneries), whose only interest in the suit arose from a contract with Armour & Company which, by its terms, *expired on January 1, 1929* (R. 152).

In its intervening petition (R. 146-218) the Canneries set out said contract (R. 148-152) which contained the following provision (R. 151):

> "In case governmental action materially interferes with the performance of this contract by second party [Armour & Co.], then and in that case it shall have the right to cancel and terminate this agreement by giving sixty days' written notice to first party of its intention so to do, and shall not be held liable for any loss resulting therefrom."

The intervening petition alleged that after the entry of the consent decree Armour & Company notified the Canneries "that the said contract must be considered as cancelled" (R. 186).

The consent decree was entered on February 27, 1920 (R. 118) and in the following May the Canneries first appeared on the scene, asking the Congressional Committees then considering the Packer and Stock Yards Act to nullify the decree (Hearings on Meat Packer Legislation, Series D, Part I, p. 105), and then applied to the Attorney General to move to have the decree vacated or modified. After public hearings the Attorney General on February 7, 1922, denied this application (Packers Consent Decree Hearings before Sub-Committee of the Committee on Agriculture and Forestry, U. S. Senate, 67th Congress, March 23 and April 21, 1922).

Thereupon, on April 19, 1922 (R. 147) the Canneries filed its aforesaid petition in the Supreme Court of the District of Columbia asking leave to intervene for the purpose of moving to vacate the consent decree in its entirety or to modify it so as to allow the packers either to resume their

dealings in the "unrelated lines" or to use their distribution facilities for moving same (R. 218).

On May 8, 1923, the District Supreme Court entered a decree denying the application of the Canneries for leave to intervene (R. 304) and the Canneries, instead of appealing direct to this Court under the Expediting Act, took an appeal to the District Court of Appeals (R. 305). That court assumed jurisdiction, reversed the decree appealed from, and directed that the court below allow the Canneries to intervene and that "such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition" (R. 315).

In its opinion the Court of Appeals said (R. 314):

> "When an equity court, in the exercise of its jurisdiction, makes a decree which, in determining the rights of the parties, enjoins one of them from carrying out a lawful contract with persons not parties to the suit, and gives effect to a cancellation clause of such contract, it is the duty of the court, if it retains jurisdiction of the case, as in this instance, to permit the intervention of the contracting party, who is not a party to the original suit and who is detrimentally affected by the decree, and to give him an opportunity to be heard. As we have observed, without intervention appellant would be left remediless. Valuable contract rights have been stricken down without notice to appellant or an opportunity to be heard. It is a fundamental principle of our jurisprudence that before private rights may be affected by judicial decree the party in interest must have due notice and an opportunity to be heard. Upon the strict observance of this principle rests the security of the citizen in the enjoyment of life, liberty, and property; otherwise these rights could be divested without due process of law."

The obvious fallacy in that statement lies in the assumption that the consent decree was an *adjudication* by the court, whereas it was merely an *agreement* of the parties under the sanction of the court (*Hodgson* v. *Vroom*, 266 Fed. 267, 268; C. C. A., 2d Circ.). The "due process of law" provisions of the Fifth and Fourteenth Amendments are not applicable to contracts (*Corrigan* v. *Buckley*, 271 U. S. 323).

Suspension of Consent Decree and Subsequent Proceedings.

Pursuant to the mandate of the Court of Appeals, the District Supreme Court allowed the Canneries to intervene and thereafter motions to vacate the consent decree were filed by said intervener and by the Armour and Swift defendants. Upon the motion papers and without any hearing of any of the issues raised by the intervening petition of the Canneries, the court, on May 1, 1925, entered the following order (Transcript of Record in *Swift & Co.* v. *United States*, No. 181, Oct. Term, 1927, pp. 313, 318, 322, 341):

> "This cause came on to be further heard at this term of court on the motions of the Swift and Armour groups of defendants to vacate and set aside and declare void the decree of February 27, 1920, entered herein, and also upon the motion of the intervener, California Cooperative Canneries, to vacate or modify the decree or suspend its operation; and after argument by counsel for the respective parties in interest and consideration by the Court it is thereupon, this 1st day of May, 1925, hereby—
>
> Adjudged, ordered and decreed as follows:

1. The said motion of the Swift and Armour groups of defendants are overruled;

2. The said motion of the California Cooperative Canneries to suspend the operation of the said decree of February 27, 1920, is granted and the operation of the said decree as a whole is suspended until further order of the Court to be made, if at all, after a full hearing on the merits according to the usual course of chancery proceedings.

By the Court:

JENNINGS BAILEY,
Justice."

Appeals from the part of the order suspending the consent decree were taken to the District Court of Appeals by the Government and National Wholesale Grocers' Association, but were dismissed on motion of the Canneries on technical grounds without consideration of the merits. The Swift and Armour defendants also appealed to that court from the denial of their motions to vacate the consent decree and all of the defendants, *including the Canneries*, waived citation (Transcript in No. 181, Oct. Term, 1927, p. 350). One of the errors assigned by the Swift and Armour appellants was as follows (*id.*, p. 360):

"7. The court erred in entering its order suspending the consent decree because it thereby materially modified said consent decree without the consent of these defendants."

The District Court of Appeals, having first dismissed the Armour-Swift appeal on the ground that it had no jurisdiction thereof (*id.*, p. 372), allowed a reargument and thereafter certified to this court five questions relating to its own jurisdiction and that of the District Supreme Court

(*id.*, pp. 381-3). After hearing argument this court ordered the entire record sent up, but in its final decision did not pass upon the propriety of that part of the order appealed from which suspended the consent decree on the motion of the Canneries.

That decision having left the consent decree in a state of suspended animation, the Government sought to revive it by applying to the District Court of Appeals for a vacation of its former decree allowing the Canneries to intervene, on the ground that, by virtue of the Expediting Act, that court had no jurisdiction of the appeal on which said decree was rendered. The denial of that relief is now before this court for review on certiorari.

The remarkable picture is presented of an intervener, whose only interest in the suit has ceased to exist, contending in effect that the consent decree which this court has declared to be valid must be left suspended, and that, because of a technical snarl in the District of Columbia courts, this court is impotent to restore to operative effect one of the most important decrees ever secured by the Government in an Anti-Trust case.

POINTS.

I.

Under the Expediting Act the appeal of the Canneries from the decree denying its motion for leave to intervene lay "only to the Supreme Court", and, as the Court of Appeals of the District of Columbia had no jurisdiction of that appeal, its decree therein was null and void.

In *Swift & Co.* v. *United States*, 276 U. S. 311, 322-3, this court said (italics ours):

> "Swift and Armour answer that the motions to vacate the consent decree are not subject to the provisions of the Expediting Act because they are not a part of the suit filed February 27, 1920, under the Anti-Trust Act, but constitute a new suit. Compare *Stevirmac Oil & Gas Co.* v. *Dittman*, 245 U. S. 210. The argument is that the original suit ended with the entry of the consent decree, or at all events, at the expiration of the term, or at the end of the 60 days from the entry of the decree allowed by the Expediting Act for an appeal. We need not inquire whether an independent suit to set aside a decree entered under the Anti-Trust Act is subject to the provisions of the Expediting Act. The consent decree provided by paragraph Eighteenth for 'entertaining at any time hereafter any application which the parties may make with respect to this decree.' Swift and Armour made these motions to vacate in the original suit; *they arose out of the three proceedings for intervention filed after entry of the consent decree; and they were entitled in the original cause. The Court of Appeals of the District was, therefore, without jurisdiction to entertain the appeals.*"

No reason is perceived why that language does not apply to the appeal taken by the Canneries from the decree denying its application for leave to intervene for the purpose of attacking the consent decree. It is true that the motions in the one case were made by original parties and in the other by a would-be intervener. But in *Continental Co.* v. *United States*, 259 U. S. 157, 164, it appears that the appeals direct from the District Court to this court under the Expediting Act were taken by *interveners*. There is no great difference in principle between a denial of a motion to vacate and a denial of leave to intervene *for the purpose of moving to vacate*.

In *Terminal R. R. Assoc.* v. *United States*, 266 U. S. 17, an appeal was taken direct to this court from an order of a United States District Court adjudging the appellants guilty of contempt, committed by disobeying a decree which had been rendered against them and in favor of the United States in a suit under the Anti-Trust Laws. The contempt proceeding was brought, not by the Government, but by certain of the defendants for the purpose of enforcing rights granted them by the original decree. The Government did not join in the complaint or participate in the hearing in the District Court, but subsequently appeared and aligned itself with the appellees. At page 28 this court said:

> "The Expedition Act gives the right of appeal in this case, and the appeal was properly allowed by a justice of this court."

Obviously, if there was a "right of appeal" to this court given by the act, no other court could have had appellate jurisdiction, for the act expressly provides that the appeal "will lie *only* to the Supreme Court".

In *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25, an appeal from an order of a Circuit Court, dismissing a petition of the Interstate Commerce Commission to obtain orders requiring the testimony of witnesses and the production of books and documents, was taken direct to this court under the act of February 19, 1903 (U. S. Code, title 49, §§43, 44, 45), which provided that the Expediting Act should "apply to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission". This court, holding that the appeal was properly taken, said at pp. 38-39 (italics ours):

> "The present proceeding is not merely advisory to the commission, but, as was said in *Interstate Commerce Commission* v. *Brimson*, *supra* [154 U. S. 447], a judgment rendered will be a final and indisputable basis of action as between the commission and the defendant, and furnish a basis for similar cases. While it has for its object the obtaining of testimony in aid of proceedings before the commission, it is evident that important questions may be involved touching the power of the commission and the constitutional rights and privileges of citizens. Congress deemed it imperative that such cases, affecting the commerce of the country as well as personal rights, should be promptly determined in a court of last resort. * * * *We think it was the purpose of the act to eliminate an appeal to the Circuit Court of Appeals and to permit the litigation to be shortened by a direct appeal to this court.*"

The fact that nine years after its entry the Packers Consent Decree is inoperative, thanks to the untiring efforts of the Canneries, sufficiently indicates the importance of disposing promptly of the claims of a stranger who seeks

to intervene for the purpose of attacking a consent decree secured by the Government in an Anti-Trust case.

II.

The decree of the District Court of Appeals refusing to vacate its previous decree, by virtue of which the Canneries was enabled to intervene and secure the suspension of the consent decree, should be reversed, and the previous decree should be declared void and of no effect.

Dated February 15, 1929.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 375.—October Term, 1928.

The United States of America, Petitioner, *vs.* California Cooperative Canneries. } On Certiorari to the Court of Appeals of the District of Columbia.

279
39

[May 20, 1929.]

Mr. Justice Brandeis delivered the opinion of the Court.

This case is a sequel to *Swift & Co.* v. *United States*, 276 U. S. 311, decided March 19, 1928. It is here by writ of certiorari for the determination of a question which arose upon the going down of the mandate in the *Swift* case.

The suit was commenced by the Government in the Supreme Court of the District of Columbia on February 27, 1920, against the leading packers to prevent a long feared monopoly in meat and other food products. On that day a consent decree was entered. Nearly five years later, two of the defendants, Swift & Co. and Armour & Co., filed in the cause motions to vacate that decree. From the denial of those motions appeals were taken to the Court of Appeals for the District. That court certified questions to us. We ordered the entire record sent here; and then held that, because the Expediting Act of February 11, 1903, c. 544, § 2, 32 Stat. 823, provides for a direct appeal to this Court in suits in equity brought by the United States under the Anti-Trust Act, the Court of Appeals was without jurisdiction. We also held that the Supreme Court of the District had jurisdiction of the subject matter and of the parties; and that the consent decree entered by it was in all respects valid and enforceable. Its order denying the motions to vacate the consent decree was, therefore, affirmed.

An obstacle to the enforcement of the consent decree remains. An order of the Supreme Court of the District, entered May 1, 1925, suspends the operation of the consent decree as a whole "until further order of the court to be made, if at all, after a full hearing on the merits according to the usual course of chancery proceed-

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ings." That order (as we know judicially from our own records, *Aspen Mining & Smelting Co.* v. *Billings*, 150 U. S. 31, 38) was made upon motion of the California Cooperative Canneries, which, long after the entry of the consent decree was allowed to intervene under the following circumstances.

On April 29, 1922, the Canneries made a motion for leave to file an intervening petition. The petition accompanying the motion alleged that the consent decree interferes with the performance by Armour & Co. of a contract theretofore made with it, by which Armour agreed to buy large quantities of California canned fruit. The petition charged that the decree is void because the Supreme Court of the District lacked jurisdiction; and it prayed that the decree be vacated. The Supreme Court denied leave to intervene. The Canneries appealed to the Court of Appeals. That court, so far as appears, did not consider the question whether, in view of the Expediting Act, it had jurisdiction on appeal. It did not refer to the decisions which hold that an order denying leave to intervene is not appealable, *In re Cutting*, 94 U. S. 15; *Credits Commutation Co.* v. *United States*, 177 U. S. 311; *Ex parte Leaf Tobacco Board of Trade*, 222 U. S. 578, 581; *In re Engelhard*, 231 U. S. 646; *City of New York* v. *Consolidated Gas Co.*, 253 U. S. 219; *New York* v. *New York Telephone Co.*, 261 U. S. 312, except where he who seeks to intervene has a direct and immediate interest in a *res* which is the subject of the suit, compare *French* v. *Gapen*, 105 U. S. 509, 524-526; *Smith* v. *Gale*, 144 U. S. 509; *Leary* v. *United States*, 224 U. S. 567; *Swift* v. *Black Panther Oil & Gas Co.*, 244 Fed. 20, 30. Nor did it refer to the settled rule of practice that intervention will not be allowed for the purpose of impeaching a decree already made.[1] On June 2, 1924, it reversed the order of the Supreme

[1] See Forbes v. Railroad, Fed. Cases No. 4,926; Coffin v. Chattanooga Water & Power Co., 44 Fed. 533; Lombard Investment Co. v. Seaboard Mfg. Co., 74 Fed. 325, 327; Land Title & Trust Co. v. Asphalt Co. of America, 114 Fed. 484; State Trust Co. v. Kansas City, etc. Co., 120 Fed. 398, 407-408. This rule of practice is embodied in Equity Rule 37. See Hutchinson v. Philadelphia & G. S. S. Co., 216 Fed. 795; Hopkins v. Lancaster, 254 Fed. 190; Caulfiel v. Lawrence, 256 Fed. 714; King v. Barr, 262 Fed. 56; Mueller v. Adler, 292 Fed. 138; In re Veach, 4 F. (2d) 334; Union Trust Co. v. Jones, 16 F. (2d) 236; Board of Drainage Com'rs. v. Lafayette Bank, 27 F. (2d) 286. Compare Farmers' Loan & Trust Co. v. Kansas City R. R., 53 Fed. 182, 186; United States v. Northern Securities Co., 128 Fed. 808; Horn v. Pere Marquette R. R., 151 Fed. 626, 634; United States v. McGee, 171 Fed. 209; Jennings v. Smith, 242 Fed. 561, 564; Adler v. Seaman, 266 Fed. 828.

Court; directed that leave to intervene be granted; and ordered "that such further proceedings thereupon be had as are necessary to determine the issue raised". *California Cooperative Canneries* v. *United States*, 299 Fed. 908. No such proceedings were ever taken.

So far as appears, the Supreme Court of the District has not been requested by the Government since our decision in the *Swift* case, to rescind the order of suspension. Instead the Government, upon the coming down of our mandate, moved in the Court of Appeals that its judgment of June 2, 1924, directing that the Canneries have leave to intervene and ordering further proceedings, be vacated. That motion the Court of Appeals denied without either an opinion or a statement of any reason therefor. This writ of certiorari was then granted to review its refusal. 278 U. S. —. In support of the refusal, the Canneries contends that the Court of Appeals had jurisdiction of the appeal from the order denying leave to intervene. It argues that the appeal was not within the purview of § 2 of the Expediting Act,[2] because it was not "an appeal from the final decree"; because the Canneries was not at the time of its appeal a party to a suit in which the United States was the "complainant"; and because, under § 226 of the District of Columbia Code, the Court of Appeals has, in its discretion, jurisdiction of an appeal from interlocutory orders. The contention is unsound.

Congress sought by the Expediting Act to ensure speedy disposition of suits in equity brought by the United States under the Anti-Trust Act. Before the passage of the Expediting Act the opportunities for delay were many. From a final decree in the trial court under the Anti-Trust Act an appeal lay to the Circuit Court of Appeals; and six months were allowed for taking the appeal. From the judgment of the Court of Appeals an appeal lay to this Court; and one year was allowed for taking that appeal. Act of March 3, 1891, c. 517, §§ 6, 11, 265 Stat. 826, 828, 829. See *United States* v. *E. C. Knight Co.*, 60 Fed. 306; 60 Fed. 934; 156 U. S. 1; *United States* v. *Trans-Missouri Freight Association*,

[2]Section 2. "That in every suit in equity pending or hereafter brought in any circuit [district] court of the United States under . . [the Anti-Trust Act], wherein the United States is complainant, . . an appeal from the final decree of the circuit [district] court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof. . . ."

53 Fed. 440; 58 Fed. 58; 166 U. S. 290. Moreover, there might be an appeal to the Circuit Court of Appeals from a decree granting or denying an interlocutory injunction, Act of June 6, 1900, c. 803, 31 Stat. 660. These provisions governing appeals in general were amended by the Expediting Act so that in suits in equity under the Anti-Trust Act "in which the United States is complainant", the appeal should be direct to this Court from the final decree in the trial court. Thus, Congress limited the right of review to an appeal from the decree which disposed of all matters, see *Collins* v. *Miller*, 252 U. S. 364; and it precluded the possibility of an appeal to either court from an interlocutory decree. The time for taking the appeal from the final decree was shortened to sixty days.

For the enforcement of the Anti-Trust Act within the District of Columbia, its Supreme Court has jurisdiction corresponding to that which is exercised by the federal district courts in the several districts; and the appellate jurisdiction of the Court of Appeals of the District corresponds to that of the several Circuit Courts of Appeals. Compare *Federal Trade Commission* v. *Klesner*, 274 U. S. 145. In suits in equity brought by the United States under the Anti-Trust Act, an appeal by one who was permitted to intervene, like an appeal by one of the original parties, must be taken direct to this Court. *Continental Insurance Co.* v. *United States*, 259 U. S. 156. Compare *Buckeye Co.* v. *Hocking Valley Ry. Co.*, 269 U. S. 42, 48. The purpose of Congress to expedite such suits would obviously be defeated if in the District of Columbia an appeal lay to the Court of Appeals from a denial of a motion for leave to intervene. Compare *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25, 38-39. Even under the Act of 1891, c. 517, in cases where the appeal was taken direct to this Court from the final decree in the trial court, every appeal thereafter taken in the cause was necessarily also to this Court. *Arkadelphia Milling Co.* v. *St. Louis Southwestern Ry. Co.*, 249 U. S. 134, 140-142; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Hasty*, 255 U. S. 252, 254. Compare *St. Louis, Iron Mountain & Southern Ry. Co.* v. *McKnight*, 244 U. S. 368.

The order of the Supreme Court of the District suspending the enforcement of the consent decree was made pursuant to the judgment of the Court of Appeals of June 2, 1924. When our opinion

in the *Swift* case settled that by reason of the Expediting Act the Court of Appeals was without jurisdiction of an appeal in a suit in equity under the Anti-Trust Act in which the United States is the complainant and that the consent decree is valid, all obstacles to the enforcement of the consent decree should have been promptly removed. In refusing to vacate its judgment and mandate the Court of Appeals departed from the limits of admissible discretion.

Reversed.

Mr. Justice SUTHERLAND and Mr. Justice STONE took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.